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CONGRESSIONAL BUDGET ACT ANNOTATED

For the Senate

INCLUDING GRAMM-RUDMAN-HOLLINGS AND RELATED BUDGET-PROCESS LEGISLATION

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

Annotations by William G. Dauster
Chief Counsel, Committee on the Budget

FEBRUARY 1990

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INTRODUCTION

The law governing the Congressional budget process has grown up in several statutes, notably with the Congressional Budget Act,[1] Gramm-Rudman-Hollings,[2] and the Byrd Rule.[3] In addition, precedents have put a gloss on the law as applied in the Senate. This incremental growth has created something of a legal nettle.

This volume collects the major legislation affecting the Congressional budget process, explains references found there, and points out some of the major precedents in the Senate interpreting the law. It magnifies the details with the hope that seeing more will also allow the reader to understand the process better.

The text includes first the Congressional Budget Act, and then Gramm-Rudman-Hollings, both as amended over the years. Footnotes set forth sections that subsequent laws have repealed. Then, *Special Issue* discussions set forth the text and background of provisions dealing with transfers of Government actions between years, the bases for the Budget Committee's jurisdiction, the Byrd Rule, and sequestration actions in fiscal year 1990.

---

[1] The Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (July 12, 1974) (codified as amended at 2 U.S.C. §§ 601-688).

[2] The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038 (Dec. 12, 1985), *amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, tit. I-II, 101 Stat. 754 (Sept. 29, 1987), *and further amended* (codified as amended at 2 U.S.C. §§ 901-922).

[3] Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), *amended by* the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), *and amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205, 101 Stat. 754, 784-85 (Sept. 29, 1987).

This work focuses on the Senate's precedents. The author defers to his colleagues on the House side of the Capitol for interpretation of the Act in that Body. Several sources exist for research on precedents in the House.[4]

The author expects that the reader will not so much read this volume as consult it. Consequently, footnotes often repeat information that relates to several different sections. The author hopes that what the volume thus loses to bulk it makes up in ease of access to information.

GUIDE TO SIGNALS

The citations in this volume follow the rules of *A Uniform System of Citation*:[5]

No signal	before a citation means that the cited authority states the proposition, identifies the source of the quotation, or identifies an authority identified in the

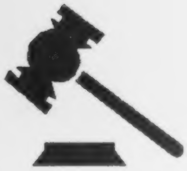
---

[4] *E.g.*, W. Brown, Constitution, Jefferson's Manual and Rules of the House of Representatives, 100th Cong., 2d Sess. (1988) (H. Doc. No. 100-248); Deschler-Brown, Procedure in the U.S. House of Representatives ch. 13 (1987); 3 L. Deschler, Deschler's Precedents of the United States House of Representatives ch. 13, § 21 (1977).

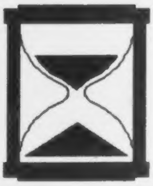
[5] Harvard Law Review Ass'n, A Uniform System of Citation 8-9, 21 (14th ed. 1986).

	text.
E.g.,	before a citation means that the cited authority, among other authorities, states the proposition.
See	before a citation means that the cited authority directly supports the proposition.
See also	before a citation means that the cited authority constitutes additional source material that supports the proposition. Authorities that state or directly support the proposition will precede this signal.
Cf.	before a citation means that the cited authority supports a proposition different from the cited proposition, but sufficiently analogous to lend support.
See generally	before a citation means that the cited authority presents background material related to the proposition.
See supra p. ____	means that the authority referred to or direct support appears above at the page cited.
See infra p. ____	means that the authority referred to or direct support appears below at the page cited.
Id.	means see the immediately preceding authority cited.

In addition to these signals, this volume also includes symbols to highlight two subjects to which participants in the process frequently refer: points of order and controlled time.



means that the text sets forth a point of order in the Senate. (As the number of possible points of order is nearly infinite, this volume does not mark all possible points of order.)



means that the text sets forth a procedure for controlled time in the Senate.

ACKNOWLEDGEMENTS AND DISCLAIMERS

The author of this volume has collected many of the precedents that appear here from the Rules database of the LEGIS computerized legislative information system available to Senate offices. Often the author has merely paraphrased the headnote of the Parliamentarian's notation of a precedent in that database. Consequently, this book owes much -- if not all -- to the Senate Parliamentarian, Alan Frumin (who wrote the lion's share of the entries in the Rules database), and his excellent and helpful staff, Assistant Parliamentarian Kevin Kayes, Second Assistant Parliamentarian Jim Weber, Third Assistant Parliamentarian Jennifer Smith, and Executive Assistant Sally Goffinet. The author owes particular thanks to former Assistant Parliamentarian and former Counsel to the Senate Budget Committee Gail Del Balzo, now of the Congressional Budget Office. Thanks are due, too, to former Parliamentarian Bob Dove, now of the Republican Leader's Office.

The Budget Committee, under the leadership of Chairman Jim Sasser of Tennessee, its Staff Director John Hilley, and its Deputy Staff Director John Callahan (who, among his many other responsibilities, oversees preparation of the Committee's prints) has provided the impetus, direction, and guidance necessary to the production of this volume. The Senate Budget

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Although the author has imposed on each of these people named above for material for this volume and for help in reviewing a draft of its text, none bears responsibility for its content. The annotations included here do not necessarily reflect the views of the Senate Budget Committee or of anyone other than the author, although, as do most authors, the author does hope that others will share the views expressed here.

The author would be remiss not to thank Ellen Weintraub for her patience in putting up with endless discussions of this volume. Finally, the author owes a debt to Martin Gardner, whose work[6] has undoubtedly inspired many an annotation, and perhaps a few laws.

W.G.D.

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[6] M. GARDNER, THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND & THROUGH THE LOOKING GLASS (1960).

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

An Act[7]

To establish a new congressional budget process; to establish Committees on the Budget in each House; to establish a Congressional Budget Office; to establish a procedure providing congressional control over the impoundment of funds by the executive branch; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLES; TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLES. -- This Act may be cited as the "Congressional Budget and Impoundment Control Act of 1974". Titles I through IX[8] may be cited as the "Congressional Budget Act of 1974", and title X[9] may be cited as the "Impoundment Control Act of 1974".

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[7] The Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (July 12, 1974) (codified as amended at 2 U.S.C. §§ 601-688).

[8] *See infra* pp. 25-296.

[9] *See infra* pp. 297-332.

(b) TABLE OF CONTENTS. --

Sec. 1. **Short titles; table of contents.**
Sec. 2. **Declaration of purposes.**
Sec. 3. **Definitions.**

TITLE I -- ESTABLISHMENT OF HOUSE AND SENATE BUDGET COMMITTEES

Sec. 101. **Budget Committee of the House of Representatives.**
Sec. 102. **Budget Committee of the Senate.**

TITLE II -- CONGRESSIONAL BUDGET OFFICE

Sec. 201. **Establishment of Office.**
Sec. 202. **Duties and functions.**
Sec. 203. **Public access to budget data.**

TITLE III -- CONGRESSIONAL BUDGET PROCESS[10]

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[10] Section 231 of Gramm-Rudman-Hollings revised the table of contents for title III to read as it currently does. *See infra* p. 357. As originally enacted in 1974, the table of contents for title III read as follows:

TITLE III -- CONGRESSIONAL BUDGET PROCESS

Sec. 300. Timetable.
Sec. 301. Adoption of first concurrent resolution.
Sec. 302. Matters to be included in joint statement of managers; reports by committees.
Sec. 303. First concurrent resolution on the budget must be adopted before legislation providing new budget authority, new spending authority, or changes in revenues or the public debt limit is considered.
Sec. 304. Permissible revisions of concurrent resolutions on the budget.
Sec. 305. Provisions relating to consideration of concurrent resolutions on the budget.
Sec. 306. Legislation dealing with congressional budget must be handled by budget committees.
Sec. 307. House committee action on all appropriations bills to be com-

(continued...)

Sec. 300. Timetable.
Sec. 301. Annual adoption of concurrent resolution on the budget.
Sec. 302. Committee allocations.
Sec. 303. Concurrent resolution on the budget must be adopted before legislation providing new budget authority, new spending authority, new credit authority or changes in revenues or the public debt limit is considered.
Sec. 304. Permissible revisions of concurrent resolutions on the budget.
Sec. 305. Procedures relating to consideration of concurrent resolutions on the budget.
Sec. 306. Legislation dealing with congressional budget must be handled by budget committees.
Sec. 307. House committee action on all appropriations bills to be completed by June 10.
Sec. 308. Reports, summaries, and projections of congressional budget actions.
Sec. 309. House approval of regular appropriation bills.
Sec. 310. Reconciliation.
Sec. 311. New Budget authority, new spending authority, and revenue legislation must be within appropriate levels.

TITLE IV -- ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

Sec. 401. Bills providing new spending authority.
Sec. 402. Legislation providing new credit authority.[11]

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[10](...continued)

pleted before first appropriation bill is reported.
Sec. 308. Reports, summaries, and projections of congressional budget actions.
Sec. 309. Completion of action on bills providing new budget authority and certain new spending authority.
Sec. 310. Second required concurrent resolution and reconciliation process.
Sec. 311. New Budget authority, new spending authority, and revenue legislation must be within appropriate levels.

[11] Section 232(a)(1) of Gramm-Rudman-Hollings revised the table of contents item for section 402 to read as it currently does. *See infra* p. 358. As originally enacted in 1974, the table

(continued...)

Sec. 403. Analyses by Congressional Budget Office.
Sec. 404. Jurisdiction of Appropriations Committees.
Sec. 405. Study by the General Accounting Office of forms of Federal financial commitment that are not reviewed annually by Congress.[12]
Sec. 406. Off-budget agencies, programs, and activities.
Sec. 407. Member user group.

TITLE V -- CHANGE OF FISCAL YEAR

Sec. 501. Fiscal year to begin October 1.
Sec. 502. Transition to new fiscal year.
Sec. 503. Accounting procedures.
Sec. 504. Conversion of authorizations of appropriations.
Sec. 505. Repeals.
Sec. 506. Technical amendment.

TITLE VI -- AMENDMENTS TO BUDGET AND ACCOUNTING ACT, 1921

Sec. 601. Matters to be included in President's budget.
Sec. 602. Midyear review.
Sec. 603. Five-year budget projections.
Sec. 604. Allowances for supplemental budget authority and uncontrollable outlays.
Sec. 605. Budget data based on continuation of existing level of services.
Sec. 606. [Repealed.][13]

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[11](...continued)
of contents item for section 402 read: "Reporting of Authorizing Legislation."

[12] Section 232(a)(2) of Gramm-Rudman-Hollings added the table of contents items for sections 405-407. *See infra* p. 358. As originally enacted in 1974, the Act had no sections 405-407.

[13] Section 232(a)(3) of Gramm-Rudman-Hollings struck the table of contents item for section 606. *See infra* p. 358. As (continued...)

Sec. 607. Year-ahead requests for authorization of new budget authority.

TITLE VII -- PROGRAM REVIEW AND EVALUATION

Sec. 701. Review and evaluation by standing committees.
Sec. 702. Review and evaluation by the Comptroller General.
Sec. 703. Continuing study of additional budget reform proposals.

TITLE VIII -- FISCAL AND BUDGETARY INFORMATION AND CONTROLS

Sec. 801. Amendment to Legislative Reorganization Act of 1970.
Sec. 802. Changes in functional categories.

TITLE IX -- MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Sec. 901. Amendments to rules of the House.
Sec. 902. Conforming amendments to standing rules of the Senate.
Sec. 903. Amendments to Legislative Reorganization Act of 1946.
Sec. 904. Exercise of rulemaking powers.
Sec. 905. Effective dates.
Sec. 906. Application of congressional budget process to fiscal year 1976.

TITLE X -- IMPOUNDMENT CONTROL

PART A -- GENERAL PROVISIONS

Sec. 1001. Disclaimer.
Sec. 1002. Amendment to Antideficiency Act.
Sec. 1003. Repeal of existing impoundment reporting provision.

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[13] (...continued)
originally enacted in 1974, the table of contents item for section 606 read: "Study of off-budget agencies."

PART B -- CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

Sec. 1011. Definitions.
Sec. 1012. Rescission of budget authority.
Sec. 1013. Proposed deferrals of budget authority.[14]
Sec. 1014. Transmission of messages; publication.
Sec. 1015. Reports by Comptroller General.
Sec. 1016. Suits by Comptroller General.
Sec. 1017. Procedure in House and Senate.

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[14] Section 8003(b) of the Omnibus Budget Reconciliation Act of 1987 revised the table of contents item for section 1013 to read as it currently does. Pub. L. No. 100-203, § 8003(b), 101 Stat. 1330, 1330-282 (Dec. 22, 1987). This change conformed the table of contents to the substantive change made by section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, which codified case law regarding deferral authority. *See* Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (Sept. 29, 1987). As originally enacted in 1974, the table of contents item for section 1013 read: "Disapproval of proposed deferrals of budget authority."

DECLARATION OF PURPOSES

SEC. 2.[15] The Congress declares that it is essential --

(1) to assure effective congressional control over the budgetary process;

(2) to provide for congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to provide a system of impoundment control;

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

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[15] Section 2 is codified at 2 U.S.C. § 621.

DEFINITIONS

SEC. 3.[16] IN GENERAL. -- For purposes of this Act --

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures and net lending of funds under budget authority[17] during such year.[18]

(2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays[19] involving Government funds

---

[16] Section 3 is codified as amended at 2 U.S.C. sec. 622.

What is now section 3 was originally section 3(a). An Act to Abolish the Joint Committee on Atomic Energy repealed section 3(b). Pub. L. No. 95-110, 91 Stat. 884 (Sept. 20, 1977). For the text of section 3(b) as originally enacted in 1974, see *infra* note 59.

[17] Section 3(2) defines "budget authority." *See infra* p. 10-11.

[18] Note that section 3(6), which defines the term "deficit" (*see infra* pp. 13-20), and section 406(a), regarding off-budget agencies, programs, and activities (*see infra* pp. 243-244), also require that certain items shall be included in budget outlays.

[19] Section 3(1) defines "outlays." *See supra* p. 10.

or to collect offsetting receipts,[20] except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.[21]

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability; and the term "tax expenditures budget" means an enumeration of such tax expenditures.

(4) The term "concurrent resolution on the budget" means --

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in section 301;[22] and

---

[20] Section 201(a)(2) of Gramm-Rudman-Hollings added the words "or to collect offsetting receipts" at this point. *See infra* p. 342.

[21] Note that section 406(a), regarding off-budget agencies, programs, and activities (*see infra* pp. 243-244), also requires that certain items shall be included in budget authority.

[22] *See infra* pp. 59-93.

(B)[23] any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section 304.[24]

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1, United States Code.[25]

---

[23] Section 232(b) of Gramm-Rudman-Hollings repealed what was then subparagraph (B) and redesignated what was then subparagraph (C) as subparagraph (B). *See infra* pp. 358-359. As originally enacted in 1974, subparagraph (B) referred to the second concurrent resolution on the budget and read as follows:

> (B) a concurrent resolution reaffirming or revising the congressional budget for the United States Government for a fiscal year as provided in section 310; . . . .

[24] *See infra* p. 128.

[25] Section 105 of title 1 of the United States Code provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105.

Section 506 of the Congressional Budget Act amended sec-

(continued...)

(6)[26] The term "deficit" means, with respect to any fiscal year, the amount by which total budget outlays[27] for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount[28] under the Balanced Budget and Emergency Deficit Control Act of 1985[29] and in calculating the excess deficit[30] for purposes of sections 251[31] and 252[32] of such Act (notwithstanding section 710(a) of the Social

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[25](...continued)
tion 105 of title 1 by striking out "June 30" and inserting "September 30." *See infra* p. 253.

[26] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (6) through (10). *See infra* p. 341.

[27] Section 3(1) defines "budget outlays." *See supra* p. 10.

[28] Section 3(7) defines "maximum deficit amount." *See infra* pp. 20-22.

[29] *See infra* pp. 335-566.

[30] Section 251(a)(1)(B) impliedly defines "deficit excess." *See infra* p. 368 & note 745.

[31] *See infra* pp. 367-409.

[32] *See infra* pp. 410-447.

Security Act[33]), for any fiscal year, the receipts

---

[33] Through fiscal year 1992, section 710(a) of the Social Security Act provides:

> **(a) Federal Old-Age and Survivors Insurance Trust Fund; Federal Disability Insurance Trust Fund**
>
> The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of Title 26, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

42 U.S.C. § 911(a).

Beginning with fiscal year 1993, section 710(a) will also apply to the Medicare hospital insurance trust fund. In the following quotation of section 710(a) as it will appear beginning in fiscal year 1993, additions to the version of section 710(a) in force through fiscal year 1992 appear in *italic*, while deletions appear in ~~strikeout~~.

> **(a)***(1)* The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, ~~and~~ the Federal Disability Insurance Trust Fund, *and the Federal Hospital Insurance Trust Fund* and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of Title 26~~,~~ shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation

(continued...)

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[33](...continued)
imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

> *(2) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.*

42 U.S.C. § 911(a).

Section 346(b) of the Social Security Amendments of 1983, Pub. L. 98-21, tit. III, § 346(b), 97 Stat. 138 (Apr. 20, 1983), and section 261(b) of Gramm-Rudman-Hollings (*see infra* pp. 540-541) require the text of section 710(a) to change effective for fiscal years beginning with fiscal year 1993.

Note that these provisions will thus take the Medicare hospital insurance trust fund out of the budget *one year before* the expiration of Gramm-Rudman-Hollings. Compare the provisions of section 3(7)(H) (*see infra* p. 22), which sets a maximum deficit amount target for fiscal year 1993, and of section 275(b) of Gramm-Rudman-Hollings (*see infra* pp. 565-566), which extends Gramm-Rudman-Hollings through fiscal year 1993. Consequently, fiscal year 1993 will have a different baseline from that for fiscal year 1992.

Note that one could read the provisions of section 406(a), which apply "[n]otwithstanding any other provision of law," to conflict with section 710(a) and to require the Medicare hospital insurance trust fund to appear on budget even after fiscal year 1992. *See infra* pp. 243-244. Section 214 of Gramm-Rudman-Hollings added section 406(a) on the same date as the last amendments to section 710(a). *See infra* p. 346.

of the Federal Old-Age and Survivors Insurance Trust Fund[34] and the Federal Disability Insurance Trust Fund[35] for such fiscal year and the taxes payable under sections 1401(a),[36] 3101(a),[37] and 3111(a)[38] of the Inter-

---

[34] This trust fund is created at 42 U.S.C. § 401(a).

[35] This trust fund is created at 42 U.S.C. § 401(b).

[36] Section 1401(a) provides:

Sec. 1401. Rate of tax

(a) Old-age, survivors, and disability insurance. -- In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year **Beginning after:**	**And before:**	**Percent:**
December 31, 1983	January 1, 1988 .	11.40
December 31, 1987	January 1, 1990 .	12.12
December 31, 1989	.....	12.40

26 U.S.C. § 1401(a).

[37] Section 3101(a) provides:

Sec. 3101. Rate of tax

(a) Old-age, survivors, and disability insurance. -- In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the

(continued...)

nal Revenue Code of 1954 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year

---

[37](...continued)
following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b)) --

In case of wages paid during:	**The rate shall be:**
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

26 U.S.C. § 3101(a).

[38] Section 3111(a) provides:

Sec. 3111. Rate of tax

(a) Old-age, survivors, and disability insurance. -- In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defines in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b)) --

In case of wages paid during:	**The rate shall be:**
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

26 U.S.C. § 3111(a).

shall be included in total budget outlays[39] for such fiscal year.[40] Notwithstanding any other provision of law except to the extent provided by section 710(a) of the Social Security Act,[41] the receipts, revenues, disbursements, budget

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[39] Section 3(1) defines "budget outlays." *See supra* p. 10.

[40] A number of bills introduced in the 100th and 101st Congresses would repeal this second sentence of section 3(6). *See* S. 2211, 100th Cong., 2d Sess., 134 CONG. REC. S3,038-39 (Mar. 24, 1988) (Sen. Sanford); S. 2914, 100th Cong., 2d Sess., 134 CONG. REC. S16,889-95 (Oct. 19, 1988) (Sen. Moynihan); S. 101, 101st Cong., 1st Sess., 135 CONG. REC. S170, S425-29 (Jan. 25, 1989) (Sen. Sanford); S. 219, 101st Cong., 1st Sess., 135 CONG. REC. S173, S636-37 (Jan. 25, 1989) (Sen. Moynihan); S. 240, 101st Cong., 1st Sess., 135 CONG. REC. S173, S682-84 (Jan. 25, 1989) (Sen. Heinz); S. 401, 101st Cong., 1st Sess., 135 CONG. REC. S1,413, S1,421-22 (Feb. 9, 1989) (Sen. Hollings); S. 852, 101st Cong., 1st Sess., 135 CONG. REC. S4,384, S4,419 (Apr. 19, 1989) (Sen. Bryan); S. 1752, 101st Cong., 1st Sess., 135 CONG. REC. S13,297, S13,299-300 (Oct. 12, 1989) (Sen. Heinz); S. 1785, 101st Cong., 1st Sess., 135 CONG. REC. S13,893 (Oct. 24, 1989) (Sen. Moynihan); S. 1795, 101st Cong., 1st Sess., 135 CONG. REC. S14,129, S14,137-38 (Oct. 25, 1989) (Sen. Hollings). *See generally* CONGRESSIONAL RESEARCH SERV., SOCIAL SECURITY, MEDICARE, AND THE UNIFIED BUDGET, S. Print No. 83, 99th Cong., 1st Sess. (Sen. Comm. on Budget Print 1985); *Concurrent Resolution on the Budget for Fiscal Year 1989: Hearings Before the Senate Comm. on the Budget*, 100th Cong., 2d Sess. 85-160 (1988) (S. Hrg. No. 578, Vol. III) (hearing March 24, 1988, on "Social Security, Deficits, and the Baby Boomers' Retirement"); Hearings Before the Senate Comm. on the Budget, 101st Cong., 1st Sess. (Oct. 18, 1989) (testimony of Senator Heinz on S. 1752).

[41] *See supra* note 33.

authority,[42] and outlays[43] of each off-budget Federal entity[44] for a fiscal year shall be included[45] in total budget authority,[46] total budget outlays,[47] and total revenues and the amounts of budget authority and outlays set forth set forth for each major functional category, for such fiscal year. Amounts paid by

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[42] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[43] Section 3(1) defines "outlays." *See supra* p. 10.

[44] Section 3(8) defines "off-budget Federal entity." *See infra* p. 22.

[45] Note the parallel requirements of section 406(a). *See infra* pp. 243-244.

Despite this effort to include off-budget Government entities in the budgetary totals, Congress has subsequently created new off-budget Government entities to refinance the Farm Credit System and the insurance system for the savings and loan industry. The Agricultural Credit Act of 1987 created the Farm Credit System Financial Assistance Corporation, the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987 created the Financing Corporation for that industry, and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 created the Resolution Funding Corporation, also for that industry. Similarly, the Omnibus Budget Reconciliation Act of 1989 took the Postal Service out of the budget.

[46] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[47] Section 3(1) defines "budget outlays." *See supra* p. 10.

the Federal Financing Bank for the purchase of loans made or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.

(7)[48] The term "maximum deficit[49]

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[48] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (6) through (10). *See infra* p. 341. Section 106(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 revised the targets set forth in paragraph (7). Pub. L. No. 100-119, § 106(a), 101 Stat. 754, 780 (Sept. 29, 1987). Section 8003(c) of the Omnibus Budget Reconciliation Act of 1987 redesignated subparagraph headings to avoid misinterpretations of the intent of section 106(a). *See* Pub. L. No. 100-203, § 8003(c), 101 Stat. 1330, 1330-282 (Dec. 22, 1987). As originally enacted in 1985, paragraph (7) read as follows:

> (7) The term "maximum deficit amount" means-
>
> (A) with respect to the fiscal year beginning October 1, 1985, $171,900,000,000;
>
> (B) with respect to the fiscal year beginning October 1, 1986, $144,000,000,000;
>
> (C) with respect to the fiscal year beginning October 1, 1987, $108,000,000,000;
>
> (D) with respect to the fiscal year beginning October 1, 1988, $72,000,000,000;
>
> (E) with respect to the fiscal year begin-

(continued...)

amount" means --

(A) with respect to the fiscal year beginning October 1, 1985, $171,900,000,000;

(B) with respect to the fiscal year beginning October 1, 1986, $144,000,000,000;

(C) with respect to the fiscal year beginning October 1, 1987, $144,000,000,000;

(D) with respect to the fiscal year beginning October 1, 1988, $136,000,000,000;

---

[48](...continued)
ning October 1, 1989, $36,000,000,000;

(F) with respect to the fiscal year beginning October 1, 1990, zero.

Section 275(b)(2)(A) of Gramm-Rudman-Hollings (as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) provides that paragraph (7) will expire on September 30, 1993. *See infra* p. 566.

Note also the provisions for the suspension of section 3(7) after declaration of a recession pursuant to section 254(a) of Gramm-Rudman-Hollings. *See infra* pp. 449-458

[49] Section 3(6) defines "deficit." *See supra* pp. 13-20.

(E) with respect to the fiscal year beginning October 1, 1989, $100,000,000,000;

(F) with respect to the fiscal year beginning October 1, 1990, $64,000,000,000;

(G) with respect to the fiscal year beginning October 1, 1991, $28,000,000,000; and

(H) with respect to the fiscal year beginning October 1, 1992, zero.[50]

(8)[51] **The term "off-budget Federal entity" means any entity (other than a privately-owned Government-sponsored entity**[52]**) --**

(A) which is established by Federal

---

[50] Note that fiscal year 1993 will have a different baseline from that for fiscal year 1992, as section 710(a) of the Social Security Act will have taken the Medicare hospital insurance trust fund out of the budget *for fiscal year 1993* (not after that year). *See supra* note 33.

[51] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (6) through (10). *See infra* p. 341.

[52] For example, the Federal National Mortgage Association (Fannie Mae).

law, and

(B) the receipts and disbursements of which are required by law to be excluded from the totals of --

(i) the budget of the United States Government submitted by the President pursuant to section 1105[53] of title 31, United States Code, or

(ii) the budget adopted by the Congress pursuant to title III[54] of this Act.

(9)[55] The term "entitlement authority" means spending authority described by section 401(c)(2)(C).[56]

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[53] Section 1105 of title 31 of the United States Code, entitled "Budget contents and submission to Congress," deals with the executive department's budget submission.

[54] *See infra* pp. 53-210.

[55] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (6) through (10). *See infra* p. 341.

[56] Section 401(c)(2)(C) describes authority:

> (C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriations Acts, to any person

(continued...)

(10)[57] The term "credit authority"[58] means authority to incur direct loan obligations or to incur primary loan guarantee commitments.[59]

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[56](...continued)

> or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

See infra pp. 218-220. For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 483.

[57] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (6) through (10). *See infra* p. 341.

[58] Section 402(b) defines "*new* credit authority":

> (b) DEFINITION. -- For purposes of this Act, the term "new credit authority" means credit authority (as defined in section 3(10) of this Act) not provided by law on the effective date of this section, including any increase in or addition to credit authority provided by law on such date.

See infra pp. 233-234.

[59] An Act to Abolish the Joint Committee on Atomic Energy, Pub. L. No. 95-110, 91 Stat. 884 (Sept. 20, 1977), repealed section 3(b). As originally enacted in 1974, section 3(b) read as follows:

> (b) JOINT COMMITTEE ON ATOMIC ENERGY. -- For purposes of titles II, III, and IV of this Act, the

(continued...)

TITLE I
ESTABLISHMENT OF HOUSE AND SENATE BUDGET COMMITTEES

BUDGET COMMITTEE OF THE HOUSE OF REPRESENTATIVES

SEC. 101. (a) Clause 1 of Rule X of the Rules of the House of Representatives is amended by redesignating paragraphs (e) through (u) as paragraphs (f) through (v), respectively, and by inserting after paragraph (d) the following new paragraph:

"(e) Committee on the Budget, to consist of twenty-three Members as follows:

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[59](...continued)
Members of the House of Representatives who are members of the Joint Committee on Atomic Energy shall be treated as a standing committee of the House, and the Members of the Senate who are members of the Joint Committee shall be treated as a standing committee of the Senate.

"(1) five Members who are members of the Committee on Appropriations;

"(2) five Members who are members of the Committee on Ways and Means;

"(3) eleven Members who are members of other standing committees;

"(4) one Member from the leadership of the majority party; and

"(5) one Member from the leadership of the minority party.

No Member shall serve as a member of the Committee on the Budget during more than two Congresses in any period of five successive Congresses beginning after 1974 (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress). All selections of Members to serve on the committee shall be made without regard to seniority."

(b) Rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

> **"6. For carrying out the purposes set forth in clause 5 of Rule XI, the Committee on the Budget or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books or papers or documents or vouchers by subpena[60] or otherwise, and to take such testimony and records, as it deems necessary. Subpenas[61] may be issued over the signature of the chairman of the committee or of any member of the committee designated by him; and may be served by any person designated by such chairman or member. The chairman of the committee, or any member thereof, may administer oaths to witnesses."**

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[60] This appears so in the original; it should read "subpoena."

[61] This appears so in the original; it should read "Subpoenas."

(c) Rule XI of the Rules of the House of Representatives is amended by redesignating clauses 5 through 33 as clauses 6 through 34, respectively, and by inserting after clause 4 the following new clause:

"5. Committee on the Budget

"(a) All concurrent resolutions on the budget (as defined in section 3(a)(4)[62] of the Congressional Budget Act of 1974) and other matters required to be referred to the Committee under titles III[63] and IV[64] of that Act.

"(b) The Committee shall have the duty --

"(1) to report the matters required to be reported by it under titles III[65] and IV[66] of the Congressional Budget Act of

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[62] This is now section 3(4). *See supra* pp. 11-12.

[63] *See infra* pp. 53-210.

[64] *See infra* pp. 211-245.

[65] *See infra* pp. 53-210.

[66] *See infra* pp. 211-245.

1974;

"(2) to make continuing studies of the effect on budget outlays[67] of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis;

"(3) to request and evaluate continuing studies of tax expenditures,[68] to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays,[69] and to report the results of such studies to the House on a recurring basis; and

"(4) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties."

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[67] Section 3(1) defines "budget outlays." *See supra* p. 10.

[68] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[69] Section 3(1) defines "budget outlays." *See supra* p. 10.

BUDGET COMMITTEE OF THE SENATE

SEC. 102. (a) Paragraph 1 of Rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

> **"(r)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4)[70] of the Congressional Budget Act of 1974) and all other matters required to be referred to that Committee under titles III[71] and IV[72] of that Act, and messages, petitions, memorials, and other matters relating thereto.**
>
> **"(2) Such committee shall have the duty --**

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[70] This is now section 3(4). *See supra* p. 11.

[71] *See infra* pp. 53-210.

[72] *See infra* pp. 211-245.

"(A) to report the matters required to be reported by it under titles III[73] and IV[74] of the Congressional Budget Act of 1974;

"(B) to make continuing studies of the effect on budget outlays[75] of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

"(C) to request and evaluate continuing studies of tax expenditures,[76] to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays,[77] and to report the results of such studies to the Senate on a recurring basis; and

"(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and

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[73] *See infra* pp. 53-210.

[74] *See infra* pp. 211-245.

[75] Section 3(1) defines "budget outlays." *See supra* p. 10.

[76] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[77] Section 3(1) defines "budget outlays." *See supra* p. 10.

duties."

(b) The table contained in paragraph 2 of rule XXV of the Standing Rules of the Senate is amended by inserting after --

"Banking, Housing and Urban Affairs .... 15"

the following:

"Budget .... 15"[78]

(c) Paragraph 6 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

> "(h) For purposes of the first sentence of subparagraph (a), membership on the Committee on the Budget shall not be taken into account until that date occurring during the first session of the Ninety-fifth Congress, upon which the appointment of the majority and minority party members of the standing committees of

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[78] This item refers to the number of members of the Budget Committee. Pursuant to changes in the Standing Rules of the Senate, the Senate increased the Committee's membership from 15 to 20 members in the 96th Congress, to 22 members in the 97th Congress, and to 24 members in the 100th Congress, and decreased the Committee's membership from 24 to 23 members in the 101st Congress.

the Senate is initially completed."[79]

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[79] Section 2 of S. Res. 9, 94th Cong., 1st Sess., 121 Cong. Rec. S19,371 (Nov. 5, 1975), repealed subsections (d) and (e). S. Res. 9 set forth the requirements for open committee meetings for committees generally that now appear at paragraph (5)(b) of rule XXVI of the Standing Rules of the Senate. Until S. Res. 9 repealed it, subsection (d) was codified at 2 U.S.C. § 190a-3. As originally enacted in 1974, subsections (d) and (e) read as follows:

> (d) Each meeting of the Committee on the Budget of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions --
>
> > (1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;
> >
> > (2) will relate solely to matters of committee staff personnel or internal staff management and procedure;
> >
> > (3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(continued...)

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[79](...continued)

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interest of effective law enforcement; or

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if --

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

(e) Paragraph 7(b) of rule XXV of the Standing Rules of the Senate and section 133A(b) of the Legislative Reorganization Act of 1946 shall not apply to the Committee on the Budget of the Senate.

Compare the similar provisions governing the Congressional Budget Office in section 203 (*see infra* pp. 49-51), and of the Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (Sept. 13, 1976) (codified as amended at 5 U.S.C. §§

(continued...)

TITLE II
CONGRESSIONAL BUDGET OFFICE

ESTABLISHMENT OF OFFICE

SEC. 201.[80] (a) IN GENERAL --

(1) There is established an office of the Congress to be known as the Congressional Budget Office (hereinafter in this title referred to as the "Office"). The Office shall be headed by a Director; and there shall be a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director.

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[79](...continued)
551, 552, 552b, 556, 557 & 39 U.S.C. § 410).

Pursuant to subsection (d), and subsequently, Standing Rule XXVI, all meetings of the Budget Committee have been open to the public.

[80] Section 201 is codified at 2 U.S.C. § 601.

(2) The Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering recommendations received from the Committees on the Budget of the House and the Senate, without regard to political affiliation and solely on the basis of his fitness to perform his duties. The Deputy Director shall be appointed by the Director.

(3) The term of office of the Director first appointed shall expire at noon on January 3, 1979, and the terms of office of Directors subsequently appointed shall expire at noon on January 3 of each fourth year thereafter.[81] Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of a term may continue to serve until his successor is appointed. Any Deputy Director shall serve until the expiration of the term of office of the Director who appointed him (and until his

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[81] Terms of Directors of the Congressional Budget Office thus expired on January 3, 1983 (for Alice M. Rivlin), and on January 3, 1987 (for Rudolph G. Penner), and will expire on January 3, 1991 (for Robert D. Reischauer), on January 3, 1995, on January 3, 1999, and so on.

successor is appointed), unless sooner removed by the Director.

(4) The Director may be removed by either House by resolution.

(5) The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule in section 5314 of title 5, United States Code. The Deputy Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as so in effect, for level IV of the Executive Schedule in section 5315 of such title.

(b) PERSONNEL. -- The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director and Deputy Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) EXPERTS AND CONSULTANTS. -- In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH. -- The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall furnish the Director any available material which he determines to be necessary in the performance of his duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or commission is authorized to provide the Office such services, facilities, and personnel.

(e) Relationship to Other Agencies of Congress. -- In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services, and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, the Library of Congress, and the Office of Technology Assessment, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General, the Librarian of Congress, and the Technology Assessment Board are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

(f) Appropriations. -- There are authorized to

be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of this subsection, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Director.

DUTIES AND FUNCTIONS

SEC. 202.[82] (a) ASSISTANCE TO BUDGET COMMITTEES. -- It shall be the duty and function of the Office to provide to the Committees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdictions,[83] including

(1) information with respect to the budget, appropriation bills,[84] and other bills authorizing or providing budget authority[85] or tax expenditures,[86]

(2) information with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions, and

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[82] Section 202 is codified as amended at 2 U.S.C. § 602.

[83] For a discussion of the Budget Committee's jurisdiction, see the *Special Issue* discussion *infra* pp. 579-591.

[84] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[85] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[86] Section 3(3) defines "tax expenditures." *See supra* p. 11.

(3) such related information as such Committees may request.

(b) ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE. -- At the request of the Committee on Appropriations of either House, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, the Office shall provide to such Committee any information which will assist it in the discharge of matters within its jurisdiction, including information described in clauses (1) and (2) of subsection (a)[87] and such related information as the Committee may request.

(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS. --

(1) At the request of any other committee of the House of Representatives or the Senate or any joint committee of the Congress, the Office shall provide to such committee or joint committee any information compiled in carrying out clauses (1) and (2) of subsection (a),[88] and, to the extent practicable, such addi-

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[87] *See supra* p. 41.

[88] *See supra* p. 41.

tional information related to the foregoing as may be requested.

(2) At the request of any Member of the House or Senate, the Office shall provide to such member any information compiled in carrying out clauses (1) and (2) of subsection (a),[89] and, to the extent available, such additional information related to the foregoing as may be requested.

(d) ASSIGNMENT OF OFFICE PERSONNEL TO COMMITTEES AND JOINT COMMITTEES. -- At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee. At the request of any other committee of either House or any joint committee of the Congress, personnel of the Office may be assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the applicable provisions of subsection (b)[90] or (c).[91]

(e) TRANSFER OF FUNCTIONS OF JOINT COMMITTEE

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[89] *See supra* p. 41.

[90] *See supra* p. 42.

[91] *See supra* pp. 42-43.

ON REDUCTION OF FEDERAL EXPENDITURES. --

(1) The duties, functions, and personnel of the Joint Committee on Reduction of Federal Expenditures are transferred to the Office, and the Joint Committee is abolished.

(2) Section 601 of the Revenue Act of 1941 (55 Stat. 726) is repealed.

(f) REPORTS TO BUDGET COMMITTEES. --

(1) On or before February 15[92] of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate a report,[93] for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including

(A) alternate levels of total revenues, total new budget authority,[94] and total

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[92] Section 221(a) of Gramm-Rudman-Hollings moved up this deadline from April 1, as originally enacted in 1974, to the current February 15. *See infra* p. 347.

[93] In practice, the Congressional Budget Office issues three reports to address the requirements of this paragraph. It generally entitles the most general report as "The Economic and Budget Outlook: Fiscal Years _____-_____."

[94] Section 3(2) defines "budget authority." *See supra* p. 10-11.

outlays[95] (including related surpluses and deficits[96]), and

(B) the levels of tax expenditures[97] under existing law,

taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year.[98] Such report shall also include a discussion of national budget priorities, including alternative ways of allocating budget authority[99] and budget outlays[100] for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs and affect balanced growth and development of the United

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[95] Section 3(1) defines "outlays." *See supra* p. 10.

[96] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[97] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[98] In response to this provision and a request of the Committee on Appropriations, the Congressional Budget Office generally prepares a report that it entitles "An Analysis of the President's Budgetary Proposals for Fiscal Year ____."

[99] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[100] Section 3(1) defines "budget outlays." *See supra* p. 10.

States.[101]

(2) The Director shall from time to time submit to the Committees on the Budget of the House of Representatives and the Senate such further reports (including reports revising[102] the report required by paragraph (1)[103]) as may be necessary or appropriate to provide such Committees with information, data, and analyses for the performance of their duties and functions.

(3)[104] On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing

(A) all programs and activities funded during the fiscal year ending

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[101] In response to this provision, the Congressional Budget Office generally prepares a report that it entitles "Reducing the Deficit: Spending and Revenue Options."

[102] In response to this provision, the Congressional Budget Office generally prepares an August report that it entitles "The Economic and Budget Outlook: An Update."

[103] *See supra* pp. 44-46.

[104] Section 221(b) of Gramm-Rudman-Hollings added paragraph (3). *See infra* pp. 347-348.

September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and

(B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.

(g) USE OF COMPUTERS AND OTHER TECHNIQUES. -- The Director may equip the Office with up-to-date computer capability (upon approval of the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate), obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

(h)[105] STUDIES. -- The Director shall conduct continuing studies to enhance comparisons of

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[105] Section 221(c) of Gramm-Rudman-Hollings added subsection (h). *See infra* p. 348.

budget outlays,[106] credit authority,[107] and tax expenditures.[108]

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[106] Section 3(1) defines "budget outlays." *See supra* p. 10.

[107] Section 3(10) defines "credit authority." *See supra* p. 24.

[108] Section 3(3) defines "tax expenditures." *See supra* p. 11.

PUBLIC ACCESS TO BUDGET DATA[109]

SEC. 203.[110] (a) RIGHT TO COPY. -- Except as provided in subsections (c)[111] and (d),[112] the Director shall make all information, data, estimates, and statistics obtained under sections 201(d)[113] and 201(e)[114] available for public copying during normal business hours, subject to reasonable rules and regulations, and shall to the extent practicable, at the request of any person, furnish a copy of any such information, data, estimates, or statistics upon payment by such person of the cost of making and furnishing such copy.

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[109] Compare the similar provisions intended to govern the Senate Budget Committee in section 102(d) (*see supra* note 79), and of the Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (Sept. 13, 1976) (codified as amended at 5 U.S.C. §§ 551, 552, 552b, 556, 557 & 39 U.S.C. § 410).

[110] Section 203 is codified as amended at 2 U.S.C. § 603.

[111] *See infra* pp. 50-51.

[112] *See infra* p. 51.

[113] *See supra* pp. 38-39.

[114] *See supra* p. 39.

(b) INDEX. -- The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which subsection (a)[115] applies and shall make such systems available for public use during normal business hours.

(c) EXCEPTIONS. -- Subsection (a)[116] shall not apply to information, data, estimates, and statistics --

(1) which are specifically exempted from disclosure by law; or

(2) which the Director determines will disclose --

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confiden-

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[115] *See supra* p. 49.

[116] *See supra* p. 49.

tial basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

(d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS. -- Subsection (a)[117] shall apply to any information, data, estimates, and statistics obtained at the request of any committee, joint committee, or Member unless such committee, joint committee, or Member has instructed the Director not to make such information, data, estimates, or statistics available for public copying.

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[117] *See supra* p. 49.

TITLE III
CONGRESSIONAL BUDGET PROCESS

TIMETABLE

SEC. 300.[118] The timetable with respect to the congressional budget process for any fiscal year is as follows:[119]

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[118] Section 300 is codified as amended at 2 U.S.C. § 631.

[119] As the Congress has enacted this timetable as an exercise of its rule-making powers (to the extent that it sets dates for the Congress), *see* sec. 904 *infra* p. 286, no illegality flows from its violation. Furthermore, the failure to comply with a deadline has no effect on points of order under the Congressional Budget Act. *See* 132 CONG. REC. S10,694 (Aug. 7, 1986).

Section 201(b) of Gramm-Rudman-Hollings revised section 300. *See infra* p. 342. As originally enacted in 1974, section 300 read as follows:

> SEC. **300**. The timetable with respect to the congressional budget process for any fiscal year is as follows:
>
> **On or before:** **Action to be completed:**

(continued...)

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[119] (...continued)

November 10	President submits current services budget.
15th day after Congress meets	President submits his budget.
March 15	Committees and joint committees submit reports to Budget Committees.
April 1	Congressional Budget Office submits report to Budget Committees.
April 15	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15	Committees report bills and resolutions authorizing new budget authority.
May 15	Congress completes action on concurrent resolution on the budget.
7th day after Labor Day	Congress completes action on bills and resolutions providing new budget authority and new spending authority.
September 15	Congress completes action on second required concurrent resolution on the budget.
September 25	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1	Fiscal year begins.

On or before:	**Action to be completed:**
First Monday after January 3	**President submits his budget.**[120]
February 15	**Congressional Budget Office submits report to Budget Committees.**[121]
February 25	**Committees submit views and estimates to Bud-**

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[120] Section 1105 of title 31 of the U.S. Code sets forth this requirement.

Nonetheless, Congress provided for a delay of the submission of the President's budget in 1988 from January 4 to February 16. *See* 133 Cong. Rec. S18,689 (Dec. 21, 1987) (colloquy between the Chairman of the Budget Committee, Senator Chiles, and the Majority Leader, Senator Byrd).

Congress again provided for a delay of the submission of the President's budget in 1990 from January 8 to January 22. The adjournment resolution for the 101st Congress provided:

> Notwithstanding the provisions of section 1105 of title 31, United States Code, the President shall transmit to the Congress not later than January 22, 1990, the Budget for fiscal year 1991.

Sec. 4, H.J. Res. 449, 101st Cong., 1st Sess., 135 Cong. Rec. S16,944 (Nov. 21, 1989).

[121] Section 202(f)(1) sets forth this requirement. *See supra* p. 44.

	get Committees.[122]
April 1	**Senate Budget Committee reports concurrent resolution on the budget.**[123]
April 15	**Congress completes action on concurrent resolution on the budget.**[124]

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[122] Section 301(d) sets forth this requirement. *See infra* p. 71.

[123] If the Senate Budget Committee has not completed action on the budget resolution by this date, then on that date, the Senate will discharge the Committee of any budget resolution that the presiding officer had referred to the Committee before that date and place it on the calendar. *See* 129 Cong. Rec. S4,726 (April 15, 1983). As originally enacted in 1974 and as in force on April 15, 1983, section 300 contained an entry for April 15 stating: "Budget Committees report first concurrent resolution on the budget to their Houses." *See supra* note 119. (Section 201(b) of Gramm-Rudman-Hollings changed the entry to read as it does now. *See infra* p. 342.) On March 24, 1983, the Senate received the fiscal year 1984 budget resolution, H. Con. Res. 91, 98th Cong., 1st Sess. (1983), from the House of Representatives, and the presiding officer referred it to the Budget Committee. 129 Cong. Rec. S3,969 (Mar. 24, 1983). When, on April 15, 1983, the Senate Budget Committee had failed to act on the resolution, the Senate discharged the resolution from the Committee and placed it on the calendar. 129 Cong. Rec. S4,726 (April 15, 1983). The Senate did this notwithstanding that the only statutory reference to the April 15 deadline appeared in section 300.

[124] Section 301(a) sets forth this requirement. *See infra* p.

(continued...)

May 15	**Annual appropriation bills[125] may be considered in the House.[126]**
June 10	**House Appropriations Committee reports last annual appropriation bill.[127]**
June 15	**Congress completes action on reconciliation legislation.[128]**
June 30	**House completes action on annual appropriation**

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[124](...continued)
60.

The failure to complete the budget resolution by this deadline has no effect on points of order under the Congressional Budget Act. 132 CONG. REC. S10,694 (Aug. 7, 1986).

For a table listing historical completion dates, see *infra* note 132.

[125] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[126] Section 303(b) provides this exception. *See infra* p. 123.

[127] Section 307 sets forth this requirement. *See infra* p. 166.

[128] Section 310(f)(1) sets forth this requirement. *See infra* p. 193.

For a table listing historical completion dates, see *infra* note 414.

	bills.
October 1	**Fiscal year begins.**[129]

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[129] Gramm-Rudman-Hollings and title 31 of the United States Code create the following, additional deadlines:

July 15	The President submits to Congress the mid-session budget review (establishing the economic and technical assumptions to be used in OMB's sequestration reports).
August 15	Snapshot date through which OMB and CBO measure deficit reduction for their initial reports. Deadline for the President's notification regarding the exercise of the President's options regarding the treatment of military personnel under Gramm-Rudman across-the-board cuts.
August 20	CBO issues its initial Gramm-Rudman report to OMB and Congress.
August 25	OMB issues its initial Gramm-Rudman report to President and Congress. President issues initial Gramm-Rudman order.
October 10	CBO issues its revised Gramm-Rudman report to OMB and Congress.
October 15	OMB issues its revised Gramm-Rudman report to President and Congress. President issues his final Gramm-Rudman order.

ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

SEC. 301.[130] (a) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.[131] -- **On or before April**

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[130] Section 301 is codified as amended at 2 U.S.C. § 632. Section 201(b) of Gramm-Rudman-Hollings revised section 301. *See infra* p. 342.

[131] The Chair will not look to the effect of language contained in a concurrent resolution on the budget reported by the Budget Committee, but will look to its form. 127 CONG. REC. S2,754 (1981); Senate Precedent PRL19810326-001 (Mar. 26, 1981) (LEGIS, Rules database). On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Hatfield posed the following parliamentary inquiry of the Chair (Senator Humphrey of New Hampshire):

> Mr. HATFIELD. . . . First, before that, would the Chair also comment or observe that the changing of those three words in no way changes the results of the resolution?
>
> The PRESIDING OFFICER. The Chair cannot look to the results of the resolution, only to the language.
>
> Mr. HATFIELD. Will the chair speak louder?
>
> The PRESIDING OFFICER. The Chair could

(continued...)

15[132] of each year, the Congress shall complete

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[131](...continued)
not look to the results of the resolution only to the language. When the language conforms to the Budget Act then no point of order lies as to the language.

Mr. HATFIELD. The Chair, in effect, then was commenting on form rather than substance, is that correct?

The PRESIDING OFFICER. That is the function of the Chair.

127 CONG. REC. S2,754 (1981).

[132] The failure to complete the budget resolution by this deadline has no effect on points of order under the Congressional Budget Act. *See* 132 CONG. REC. S10,694 (Aug. 7, 1986).

Historically, Congress has completed budget resolutions as follows:

Adoption Dates of Budget Resolutions

Fiscal year	Budget resolution adopted
1976	May 14, 1975 (H. Con. Res. 218)
1977	May 13, 1976 (S. Con. Res. 109)
1978	May 17, 1977 (S. Con. Res. 19)
1979	May 17, 1978 (S. Con. Res. 80)
1980	May 24, 1979 (H. Con. Res. 107)
1981	June 12, 1980 (H. Con. Res. 307)
1982	May 21, 1981 (H. Con. Res. 115)
1983	June 23, 1982 (S. Con. Res. 92)
1984	June 23, 1983 (H. Con. Res. 91)
1985	October 1, 1984 (H. Con. Res. 280)

(continued...)

action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year, and planning levels for each of the two ensuing fiscal years, for the following --

(1) totals of new budget authority,[133] budget outlays,[134] direct loan obligations, and primary loan guarantee commitments;

(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(3) the surplus or deficit[135] in the budget;

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[132](...continued)

1986	August 1, 1985 (S. Con. Res. 32)
1987	May 15, 1986 (H. Con. Res. 337)
1988	June 25, 1987 (H. Con. Res. 93)
1989	June 6, 1988 (H. Con. Res. 268)
1990	May 18, 1989 (H. Con. Res. 106)

[133] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[134] Section 3(1) defines "budget outlays." *See supra* p. 10.

[135] Section 3(6) defines "deficit." *See supra* pp. 13-20.

(4) new budget authority,[136] budget outlays,[137] direct loan obligations, and primary loan guarantee commitments for each major functional category,[138] based on allocations of the total levels set forth pursuant to paragraph (1); and

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[136] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[137] Section 3(1) defines "budget outlays." *See supra* p. 10.

[138] Section 911(b) of title 42 of the United States Code provides for a separate major functional category for Medicare. Note that the content of that functional category changes in fiscal year 1993. *See supra* note 33.

Section 802, as originally enacted, while not addressing the congressional budget, did address the alteration of functional categories in the President's budget. *See infra* note 571. The substance of section 802 is codified at section 1104(c) of title 31 of the United States Code, which states:

> (c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress.

31 U.S.C. § 1104(c).

(5) the public debt.[139]

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[139] The public debt limit is set at 31 U.S.C. § 3101.

Rule XLIX of the Rules of the House of Representatives provides that the House automatically passes a joint resolution increasing the statutory limit on the public debt whenever it adopts a budget resolution that includes an increase in the limit. Rule XLIX provides:

> ### RULE XLIX.
>
> ### ESTABLISHMENT OF STATUTORY LIMIT ON THE PUBLIC DEBT
>
> 1. Upon the adoption by Congress (under section 301 or 304 of the Congressional Budget Act of 1974) of any concurrent resolution on the budget setting forth as the appropriate level of the public debt for the period to which such concurrent resolution relates an amount which is different from the amount of the statutory limit on the public debt that would otherwise be in effect for such period, the enrolling clerk of the House of Representatives shall prepare an engrossment of a joint resolution, in the form prescribed in clause 2, increasing or decreasing the statutory limit on the public debt. The vote by which the conference report on the concurrent resolution on the budget was agreed to in the House (or by which the concurrent resolution itself was adopted in the House, if there is no conference report) shall be deemed to have been a vote in favor of such joint resolution upon final passage in the House of Representatives. Upon the engrossment of such joint resolution it shall be deemed to have passed the House of Representatives and been duly certified and examined; the engrossed copy shall be signed by the Clerk and transmitted to the Senate for further legislative action;

(continued...)

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[139] (...continued)
and (upon final passage by both Houses) the joint resolution shall be signed by the presiding officers of both Houses and presented to the President for his signature (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

2. The matter after the resolving clause in any joint resolution described in clause 1 shall be as follows: "That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '$___________'", with the blank being filled in with a limitation equal to the appropriate level of the public debt as set forth, pursuant to section 301(a)(5) of the Congressional Budget Act of 1974, in the concurrent resolution on the budget (whether such resolution was adopted under section 301, 304, or 310 of such Act). Only one joint resolution shall be prepared under clause 1 upon the adoption of any concurrent resolution on the budget; and, if the concurrent resolution set forth a different appropriate level of the public debt (pursuant to such section 301(a)(5)) for each of two separate periods, the blank referred to in the preceding sentence shall be filled in with both the limitation which is to apply for the later of the two periods (specifying the date on which that limitation is to take effect) and the limitation which is to apply for the earlier of such periods.

3. The reports of the Committee on the Budget of the House of Representatives accompanying any concurrent resolution on the budget under section 301(d), as well as the joint explanatory statement

(continued...)

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[139](...continued)
accompanying the conference report on any concurrent resolution on the budget, shall contain a clear statement of the effect under this rule that the adoption by both the House and the Senate of such concurrent resolution in the form in which it is being reported (and the adoption of the joint resolution thereupon prepared and enrolled under clause 1) would have upon the statutory limit on the public debt. It shall not be in order in the House of Representatives at any time to consider or adopt any concurrent resolution on the budget (or agree to any conference report thereon) if at that time the report accompanying such concurrent resolution (or the joint statement accompanying such conference report) does not comply with the requirements of this clause.

4. Nothing in this section shall be construed as limiting or otherwise affecting the power of the House of Representatives or the Senate to consider and pass a bill which (without regard to the procedures under clause 1) changes the statutory limit on the public debt most recently established under this rule or otherwise; and the rights of Members and committees of the House with respect to the introduction, consideration, and reporting of any such bill shall be determined as though this rule had not been adopted.

5. As used in this rule, the term "statutory limit on the public debt" means the maximum face amount of obligations issued under authority of chapter 31 of title 31, United States Code, and obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), determined under section 3101(b) of title 31 after the application of

(continued...)

(b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION. -- The concurrent resolution on the budget may --

(1) set forth, if required by subsection (f),[140] the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b)[141] of

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[139] (...continued)
section 3101(a), title 31 which may be outstanding at any one time.

RULES OF THE HOUSE OF REPRESENTATIVES Rule XLIX (1988).

[140] *See infra* pp. 81-86.

[141] Section 4(b) of the Employment Act of 1946 provides (as amended):

> **(b) Interim numerical goals for initial Economic Reports**
>
> The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d) of this section, in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for --
>
> (1) reducing the rate of unemployment, as set forth pursuant to section 3(d) of this Act, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among

(continued...)

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[141](...continued)

> individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report;
>
> (2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment; and
>
> (3) reducing the share of the Nation's gross national product accounted for by Federal outlays to 21 per centum or less by 1981, and to 20 per centum or less by 1983 and thereafter, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.
>
> For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.

15 U.S.C. § 1022a(b).

Section 4(d) of the Employment Act of 1946 (to which section 4(b) refers) states:

(continued...)

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[141](...continued)

> **(d) Review by President; report to Congress; modification of timetables.**
>
> In the second Economic Report after enactment of the Full Employment and Balanced Growth Act of 1978 [enacted Oct. 27, 1978], the President shall review the numerical goals and timetables for the reduction of unemployment, inflation, and Federal outlays as a proportion of gross national product, and the goal of balancing the Federal budget; report to the Congress on the degree of progress being made, the programs and policies being used, and any obstacles to achieving such goals and timetables; and, if necessary, propose corrective economic measures toward achievement of such goals and timetables: Provided, That beginning with the second Report and in any subsequent Reports, if the President finds it necessary, the President may recommend modification of the timetable or timetables for the achievement of the goals provided for in subsection (b) and the annual numerical goals to make them consistent with the modified timetable or timetables, and the Congress may take such action as it deems appropriate consistent with title III of the Full Employment and Balanced Growth Act of 1978.

15 U.S.C. § 1022a(d).

Section 3(d) of the Employment Act of 1946 (to which section 4(b)(1) of that Act refers) states :

> (d) Rate of Unemployment. For the purposes of the Full Employment and Balanced Growth Act of 1978, the percentage rate of unemployment as a percentage of the civilian labor force as set forth by the

(continued...)

the Employment Act of 1946 should be achieved;

(2) include reconciliation directives described in section 310;[142]

(3) require a procedure[143] under which all or certain bills or resolutions providing new budget authority[144] or new entitlement author-

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[141](...continued)
Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of the date of enactment of this Act.

15 U.S.C. § 1022(d). The enactment date to which section 3(d) refers is October 27, 1978.

[142] *See infra* pp 176-196.

[143] For example:

> SEC. 7. No bill or resolution providing new budget authority for fiscal year 1983 or providing new spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 in excess of the allocation to or report by a committee or subcommittee pursuant to section 302 of the Budget Act shall be enrolled until Congress has completed action on the Second Budget Resolution for that year as required to be reported under section 310(a) of the Budget Act.

S. Con. Res. 92, 97th Cong., 2d Sess., § 7 (1982).

[144] Section 3(2) defines "budget authority." *See supra* p. 10-11.

ity[145] for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution[146] or both required by such concurrent resolution to be reported in accordance with section 310(b);[147] and

(4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.[148]

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[145] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 483.

[146] Section 310(b) defines "reconciliation resolution." *See infra* pp. 183-184.

[147] *See infra* pp. 183-184.

[148] Some refer to this paragraph as the "elastic clause." Section 2 sets forth the purposes of this Act as:

> (1) to assure effective congressional control over the budgetary process;
>
> (2) to provide for congressional determination each year of the appropriate level of Federal revenues and expenditures;
>
> (3) to provide a system of impoundment control;

(continued...)

(c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE THE EFFECT OF CHANGING ANY RULE OF THE HOUSE OF REPRESENTATIVES. -- If the Committee on the Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

(d) VIEWS AND ESTIMATES OF OTHER COMMITTEES. -- On or before February 25 of each year, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each

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[148](...continued)

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

See supra p. 9.

committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a)[149] and (b)[150] which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946.[151] Any other committee of the

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[149] *See supra* pp. 59-63.

[150] *See supra* pp. 66-70.

[151] In this connection, section 1021 of title 15 of the United States Code sets forth several Congressional statements of purposes:

> Sec. 1021. Congressional declarations
>
> (a) Generally. The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies,and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare,

(continued...)

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[151](...continued)
conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 5(b) of this Act.

(b) Full opportunities for employment. The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

(c) Inflation. The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

(d) Coordination of Federal policies and programs. The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such

(continued...)

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[151](...continued)
Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

(e) Federal controls. The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this Act shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

(f) Expansion of private employment. The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth--

(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

(2) expansion of private employment through Federal assistance in connection with

(continued...)

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[151] (...continued)

the priority programs in such Act;

(3) expansion of public employment other than through the provisions of section 206 of such Act; and

(4) when recommended by the President under section 206 of such Act and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

(g) Trade deficits. The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

(h) Balanced Federal budget. The Congress further declares that it is the purpose of the Full

(continued...)

House of Representatives or the Senate may submit to the Committee on the Budget of its

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[151](...continued)
Employment and Balanced Growth Act of 1978 to achieve a balanced Federal budget consistent with the achievement of the medium-term goals specified in section 4.

(i) Investment needs of private enterprise. The Congress further declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments, to use all practical means consistent with other essential considerations of national policy to provide sufficient incentives to assure meeting the investment needs of private enterprise, including the needs of small and medium sized businesses, in order to increase the production of goods, the provision of services, employment, the opportunity for profit, the payment of taxes, and to reduce and control inflation. To the extent it is reasonably possible to do so, private enterprise investments in depressed urban and rural areas should be promoted to reduce the high levels of unemployment that exist there.

(j) Reliance on private sector. The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to rely principally on the private sector for expansion of economic activity and creation of new jobs for a growing labor force. Toward this end, it is the purpose of this Act to encourage the adoption of fiscal policies that would establish the share of the gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities.

15 U.S.C. § 1021.

House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a)[152] and (b)[153] which relate to matters within its jurisdiction or functions.

(e) Hearings and Report. -- In developing the concurrent resolution on the budget referred to in subsection (a)[154] for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (d)[155] may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and

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[152] *See supra* pp. 59-63.

[153] *See supra* pp. 66-70.

[154] *See supra* pp. 59-63.

[155] *See supra* pp. 71-77.

levels of budget authority[156] and outlays[157] set forth in such concurrent resolution are designed to achieve any goals it is recommending. The report accompanying such concurrent resolution shall include, but not be limited to --

(1) a comparison of revenues estimated by the committee with those estimated in the budget submitted by the President;

(2) a comparison of the appropriate levels of total budget outlays[158] and total new budget authority,[159] total direct loan obligations, total primary loan guarantee commitments, as set forth in such concurrent resolution, with those estimated or requested in the budget submitted by the President;

(3) with respect to each major functional category, an estimate of budget outlays[160] and

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[156] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[157] Section 3(1) defines "outlays." *See supra* p. 10.

[158] Section 3(1) defines "budget outlays." *See supra* p. 10.

[159] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[160] Section 3(1) defines "budget outlays." *See supra* p. 10.

an appropriate level of new budget authority[161] for all proposed programs and for all existing programs (including renewals thereof), with the estimate and level for existing programs being divided between permanent authority and funds provided in appropriation Acts,[162] and with each such division being subdivided between controllable amounts and all other amounts;

(4) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;

(5) the economic assumptions and objectives which underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and objectives which the committee considered;

(6) projections (not limited to the following), for the period of five fiscal years beginning with such fiscal year, of the estimated

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[161] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[162] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

levels of total budget outlays[163] and total new budget authority,[164] the estimated revenues to be received, and the estimated surplus or deficit,[165] if any, for each fiscal year in such period, and the estimated levels of tax expenditures[166] (the tax expenditures budget) by major functional categories;

(7) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

(8) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolution; and

(9) allocations described in section 302(a).[167]

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[163] Section 3(1) defines "budget outlays." *See supra* p. 10.

[164] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[165] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[166] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[167] *See infra* pp. 94-95.

(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT. --

(1) If, pursuant to section 4(c)[168] of the

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[168] Section 4(c) of the Employment Act of 1946 states:

(c) Achievement of full employment, balanced budget, zero inflation rate, and 20 per centum level of Federal outlays as a proportion of gross national product for succeeding Economic Reports.

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1), each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2), each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: Provided, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(3) Upon achievement of the 20 per centum goal specified in subsection (b)(3), each succeeding Economic Report shall have the goal of establishing the share of an expanding gross national product accounted for by Federal outlays at a level of 20 per centum or less, or the

(continued...)

Employment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b)[169] of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(2) After the Congress has expressed its opinion pursuant to paragraph (1)[170] as to the year in which the goals for reducing unemployment set forth in section 4(b)[171] of the

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[168] (...continued)

> lowest level consistent with national needs and priorities: Provided, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in subsection (b)(1) for the reduction of unemployment.

15 U.S.C. § 1022a(c). The references to subsection (b) refer to section 4(b), set forth *supra* note 66.

[169] *See supra* note 141.

[170] *See supra* pp. 81-82.

[171] *See supra* note 141.

Employment Act of 1946 can be achieved, if, pursuant to section 4(e)[172] of such Act, the President recommends in the Economic

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[172] Section 4(e) of the Employment Act of 1946 states:

> (e) Interim numerical goals for succeeding Economic Reports. If, after achievement of the 3 and 4 per centum goals specified in subsection (b), the unemployment rate for a year as set forth pursuant to section 3(d) of this Act is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided,* That, if the President finds it necessary, the President may, under the authority provided in subsection (d), recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.

15 U.S.C. § 1022a(e). Of the sections to which section 4(e) refers, subsections (b) and (d) and section 3(d) appear *supra* note 141, while section 304 of the Full Employment and Balanced Growth Act of 1978 added relevant sections of the Congressional Budget Act.

Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1)[173] or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(3) It shall be in order to amend[174] the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a)[175]) set forth in such resolution in germane[176] fashion in order to be consistent with the economic

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[173] *See supra* pp. 81-82.

[174] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 257 (regarding section 303(a)).

[175] *See supra* pp. 59-63.

[176] For a discussion of germaneness, see *infra* note 304.

goals (as described in section 3(a)(2)[177] and

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[177] Section 3(a)(2) of the Employment Act of 1946 states:

Sec. 1022. Economic Report of President; coverage; supplementary reports; reference to congressional joint committee; percentage rate of unemployment; definitions

(a) Time of submission; contents. The President shall transmit to the Congress during the first twenty days of each regular session, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this Act referred to as the "Economic Report" together with the annual report of the Council of Economic Advisers submitted in accord with section 11(c) of this Act, setting forth --

. . .

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade

(continued...)

4(b)[178] of the Employment Act of 1946) which such amendment proposes can be achieved by the year specified in such amendment.

(g)[179] ECONOMIC ASSUMPTIONS. --

(1) It shall not be in order[180] in the Senate to consider any concurrent resolution on the budget for a fiscal year,[181] or any amend-

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[177](...continued)

balance, and proper attention to national priorities; and

. . . .

15 U.S.C. § 1022(a)(2).

[178] *See supra* note 141.

[179] Section 201(b) of Gramm-Rudman-Hollings added what is now section 301(g)(2) as section 301(g). *See infra* p. 342. Section 208(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added sections 301(g)(1) and 301(g)(3) and changed the title of the subsection from "COMMON ECONOMIC ASSUMPTIONS" to "ECONOMIC ASSUMPTIONS." Pub. L. No. 100-119, § 208(a), 101 Stat. 754, 786 (Sept. 29, 1987) (codified at 2 U.S.C. § 632(g)).

[180] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 255 (regarding section 303(a)).

[181] Section 304(c) applies section 301(g) to revisions of budget resolutions. *See infra* p. 130.

ment thereto,[182] or any conference report thereon, that sets forth amounts and levels that are determined on the basis of more than one set of economic and technical assumptions.

(2) The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement,[183] is based.

(3) Subject to periodic reestimation based on changed economic conditions or technical estimates, determinations under

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[182] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 257 (regarding section 303(a)).

[183] Section 208(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added the comma here. Pub. L. No. 100-119, § 208(a), 101 Stat. 754, 786 (Sept. 29, 1987) (codified at 2 U.S.C. § 632(g)).

titles III[184] and IV[185] of the Congressional Budget Act of 1974 shall be based upon such common economic and technical assumptions.

(h) BUDGET COMMITTEE CONSULTATION WITH COMMITTEES. -- The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees

(i) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.[186] --

(1)(A) Except as provided in paragraph

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[184] *See* pp. 53-210.

[185] *See infra* pp. 211-245.

[186] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 301(i) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See infra* p. 566.

Section 275(b)(2)(B) of Gramm-Rudman-Hollings provides that section 301(i) itself also expires on September 30, 1993. *See infra* p. 566.

(2),[187] it shall not be in order[188] in either the House of Representatives or the Senate to consider any concurrent resolution on the budget[189] for a fiscal year under this section,[190] or to consider any amendment to such a concurrent resolution,[191] or to consider a conference report on such a concurrent resolution, if the level of total budget outlays[192] for such fiscal year that is set forth in such concurrent

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[187] *See infra* pp. 91-93.

[188] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 255 (regarding section 303(a)).

[189] Section 304(b) applies section 301(i) to revisions of budget resolutions. *See infra* pp. 128-130.

[190] Because section 301(i)(1)(A) does not contain the words "as reported" here, points of order under section 302(i)(1)(A) will apply to concurrent resolutions as amended by amendments against which points of order would lie under section 302(i)(1)(A). *Cf. infra* note 431 (regarding the meaning of "as reported" in section 311(a)).

[191] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 257 (regarding section 303).

[192] Section 3(1) defines "budget outlays." *See supra* p. 10.

resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than[193] the maximum deficit[194] amount for such fiscal year as determined under section 3(7),[195] or if the adoption of such amendment would result in a level of total budget outlays[196] for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 3(7).[197]

(B) In the House of Representatives the point of order established under subparagraph (A)[198] with respect to the consideration of a conference report or with respect to the consideration of a motion to concur, with or without an amendment or amendments, in a

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[193] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

[194] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[195] *See supra* pp. 20-22.

[196] Section 3(1) defines "budget outlays." *See supra* p. 10.

[197] *See supra* pp. 20-22.

[198] *See supra* pp. 88-90.

Senate amendment, the stage of disagreement having been reached, may be waived only by a vote of three-fifths[199] of the Members present and voting, a quorum being present.

(2)(A)[200] Paragraph (1)[201] of this subsection shall not apply if a declaration of war by the Congress[202] is in effect.[203]

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[199] Note that this sets forth the only supermajority requirement under the Congressional Budget Act in the House of Representatives. Compare the requirements in the Senate of section 904(c) of the Congressional Budget Act (*see infra* pp. 290-291), sections 271(b) and 271(c) of Gramm-Rudman-Hollings (*see infra* pp. 543-544), and subsections (a) and (b) of the Byrd Rule (*see infra* pp. 595-597). Note also that each of those sections regarding the Senate sets forth a requirement for the affirmative vote of three-fifths of the Members, *duly chosen and sworn*, that is, 60 Senators, as opposed to three-fifths of the Members *present and voting* in the House provision.

[200] Section 106(d) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 inserted "(A)" here and added subparagraphs (B) and (C). Pub. L. No. 100-119, § 106(d), 101 Stat. 754, 781 (Sept. 29, 1987) (codified at 2 U.S.C. § 632(i)).

[201] *See supra* pp. 88-91.

[202] The Constitution grants Congress the power "[t]o declare War." U.S. CONST. art. I, sec. 8, cl. 11.

[203] Note also the provisions for the suspension of section 301(i) after declaration of a recession pursuant to section 254(a) of Gramm-Rudman-Hollings. *See infra* pp. 449-458.

(B) Paragraph (1)[204] shall not apply to the consideration of any concurrent resolution on the budget for fiscal year 1988 or fiscal year 1989, or any amendment thereto or conference report thereon, if such concurrent resolution or conference report provides, or in the case of an amendment if the concurrent resolution as changed by the adoption of such amendment would provide for deficit[205] reduction from a budget baseline estimate as specified in section 251(a)(6)[206] of the Balanced Budget and Emergency Deficit Control Act of 1985 for such fiscal year (based on laws in effect on January 1 of the calendar year during which the fiscal year begins) equal to or greater than the maximum amount of unachieved deficit reduction for such fiscal year as specified in section 251(a)(3)(A)[207] of such Act.

(C) For purposes of the application of subparagraph (B),[208] the amount of deficit[209]

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[204] *See supra* pp. 88-91.

[205] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[206] *See infra* pp. 391-400.

[207] *See infra* pp. 379-382.

[208] *See supra* p. 92.

reduction for a fiscal year provided for in a concurrent resolution, or amendment thereto or conference report thereon, shall be determined on the basis of estimates made by the Committee on the Budget[210] of the House of Representatives or of the Senate, as the case may be.

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[209] (...continued)
[209] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[210] This section reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 302(g), *infra* p. 105; section 310(d)(4), *infra* p. 190; section 311(c), *infra* p. 210; and section 273 of Gramm-Rudman-Hollings, *infra* p. 556.

COMMITTEE ALLOCATIONS

SEC. 302. (a)[211] ALLOCATION OF TOTALS. --

(1) For the House of Representatives, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays,[212] total new budget authority,[213] total entitlement authority,[214] and total credit authority[215] among each committee of the House of Representatives which has jurisdiction over laws, bill and resolutions providing such new budget authority, such entitlement authority, or such credit authority. The allocation shall,

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[211] Section 302 is codified as amended at 2 U.S.C. § 633.

[212] Section 3(1) defines "budget outlays." *See supra* p. 10.

[213] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[214] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

[215] Section 3(10) defines "credit authority." *See supra* p. 24.

for each committee, divide new budget authority, entitlement authority, and credit authority between amounts provided or required by law on the date of such conference report (mandatory or uncontrollable amounts), and amounts not so provided or required (discretionary or controllable amounts), and shall make the same division for estimated outlays that would result from such new budget authority.

(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays,[216] total new budget authority[217] and new credit authority[218] among each committee of the House of Representatives and the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

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[216] Section 3(1) defines "budget outlays." *See supra* p. 10.

[217] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[218] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

(b) REPORTS BY COMMITTEES. -- As soon as practicable after a concurrent resolution on the budget is agreed to --

(1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House,

(A) subdivide among its subcommittees the allocation of budget outlays,[219] new budget authority,[220] and new credit authority[221] allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and

(B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

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[219] Section 3(1) defines "budget outlays." *See supra* p. 10.

[220] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[221] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

(2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made,

(A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and

(B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report to its House the subdivisions made by it pursuant to this subsection.

(c) POINT OF ORDER.[222] -- It shall not be in

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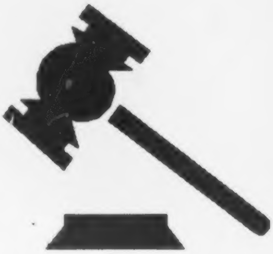
[222] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 302(c) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. (Section 211 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added section 302(c) to the list of points of order with this requirement. Pub. L. No. 101-119, § 211, 101 Stat. 754, 787 (1987) (codified at 2 U.S.C. § 901 note).) Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this

(continued...)

order[223] in the House of Representatives or the Senate to consider any bill or resolution,[224] or amendment thereto,[225] providing --

(1) new budget author-



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[222](...continued) supermajority requirement expires on September 30, 1993. *See infra* p. 566.

[223] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 255 (regarding section 303(a)).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

[224] Because section 302(c) does not contain the words "as reported" here, points of order under section 302(c) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(c). *Cf. infra* note 431 (regarding the meaning of "as reported" in section 311(a)).

[225] *Cf. infra* note 257 (by virtue of its application to "amendments," section 303 also applies to conference reports).

An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 257 (regarding section 303(a)).

ity[226] for a fiscal year;

(2) new spending authority as described in section 401(c)(2)[227] for a fiscal year;[228] or

(3) new credit authority[229] for a fiscal year;

within the jurisdiction of any committee which has received an appropriate allocation of such authority pursuant to subsection (a)[230] for such fiscal year, unless and until such committee

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[226] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[227] *See infra* pp. 216-221.

[228] *See, e.g.*, 132 Cong. Rec. S10,693-94 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 302(c)); 132 Cong. Rec. S10,145-46 (1986); Senate Precedent PRL19860801-003 (Aug. 1, 1986) (LEGIS, Rules database) (amendment providing entitlement authority within the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry subject to section 302(c)); 132 Cong. Rec. S10,017 (1986); Senate Precedent PRL19860731-002 (July 31, 1986) (LEGIS, Rules database) (same).

[229] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

[230] *See supra* pp. 94-95.

makes the allocation or subdivisions required by subsection (b),[231] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

(d) SUBSEQUENT CONCURRENT RESOLUTIONS. -- In the case of a concurrent resolution on the budget referred to in section 304,[232] the allocations under subsection (a)[233] and the subdivision under subsection (b)[234] shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

(e) ALTERATION OF ALLOCATIONS. -- At any time after a committee reports the allocations required to be made under subsection (b),[235] such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.

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[231] *See supra* pp. 96-97.

[232] *See infra* pp. 128-130.

[233] *See supra* pp. 94-95.

[234] *See supra* pp. 96-97.

[235] *See supra* pp. 96-97.

(f) LEGISLATION SUBJECT TO POINT OF ORDER.[236] --

(1) IN THE HOUSE OF REPRESENTATIVES. -- After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, resolution, or amendment providing new budget authority[237] for such fiscal year, new entitlement authority[238] effective during such fiscal

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[236] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 302(f) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543; *see also* 132 CONG. REC. S14,202 (1986); Senate Precedent PRL19860929-002 (Sept. 29, 1986) (LEGIS, Rules database). Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See infra* p. 566.

Note also the provisions for the suspension of section 302(f) under certain circumstances after declaration of a recession pursuant to section 254(a) of Gramm-Rudman-Hollings. *See infra* pp. 449-458.

[237] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[238] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

year, or new credit authority[239] for such fiscal year, or any conference report on any such bill or resolution, if --

(A) the enactment of such bill or resolution as reported;

(B) the adoption and enactment of such amendment; or

(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate allocation made pursuant to subsection (b)[240] for such fiscal year of new discretionary budget authority, new entitlement authority, or new credit authority to be exceeded.

(2) IN THE SENATE. -- At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 301(a)[241] for a fis-

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[239] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

[240] *See supra* pp. 96-97.

[241] *See supra* pp. 59-63.

cal year, it shall not be in order[242] in the Senate to consider any bill or resolution[243] (including a conference report thereon), or any amendment to a bill or resolution,[244] that

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[242] *See, e.g.*, 132 Cong. Rec. S14,716 (1986); Senate Precedent PRL19861002-003 (Oct. 2, 1986) (amendment causing allocation to Agriculture Subcommittee to be exceeded ruled out of order); 132 Cong. Rec. S14,410 (1986); Senate Precedent PRL19861001-002 (Oct. 1, 1986) (amendment causing allocation to be exceeded ruled out of order).

Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 255 (regarding section 303(a)).

[243] Because section 302(f) does not contain the words "as reported" here, points of order under section 302(f) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(f). *Cf. infra* note 431 (regarding the meaning of "as reported" in section 311(a)).

[244] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 257 (regarding section 303).

provides for budget outlays[245] or new budget authority[246] in excess of the appropriate allocation[247] of such outlays or authority reported under subsection (b)[248] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

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[245] Section 3(1) defines "budget outlays." *See supra* p. 10.

A point of order lies under section 302(f) against an amendment that would increase outlays above the appropriate allocation by increasing an obligation ceiling. 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

[246] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[247] If a committee has not yet filed its allocation under section 302(b), no point of order can lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database).

The appropriate allocation setting the ceiling may be an allocation of no dollars. *See* 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

[248] *See supra* pp. 96-97.

(g) DETERMINATIONS BY BUDGET COMMITTEES. -- For purposes of this section, the levels of new budget authority,[249] spending authority as described in section 401(c)(2),[250] outlays[251] and new credit authority[252] for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[253] of the House of Representatives or the Senate, as the case may be.

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[249] Section 3(2) defines "budget authority." *See supra* p. 10-11.

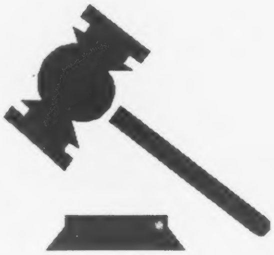
[250] *See infra* pp. 216-221.

[251] Section 3(1) defines "outlays." *See supra* p. 10.

[252] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

[253] This section reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 301(i)(2)(C), *supra* p. 92; section 310(d)(4), *infra* p. 190; section 311(c), *infra* p. 210; and section 273 of Gramm-Rudman-Hollings, *infra* p. 556.

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, NEW CREDIT AUTHORITY, OR CHANGES IN REVENUES OR THE PUBLIC DEBT LIMIT IS CONSIDERED



SEC. 303.[254] (a) IN GENERAL. -- It shall not be in order[255] in either the House of Representatives or the Senate to consider

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[254] Section 303 is codified as amended at 2 U.S.C. § 634.

[255] Although section 303 sets forth a prohibition, that prohibition is not self-enforcing, and requires a point of order from the floor for its enforcement. 130 CONG. REC. S7,919 (1984); Senate Precedent PRL19840621-001 (June 21, 1984) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

any bill[256] or resolution (or amendment thereto)[257] as reported[258] to the House or Senate which pro-

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[256] If a bill violates section 303, the point of order will lie notwithstanding that a complete substitute that would not violate section 303 is pending. 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues).

[257] By virtue of its application to "amendments," section 303 also applies to conference reports where amendments made in conference contain new matter not previously considered by the Senate. 124 CONG. REC. S9,383-403 (1978); Senate Precedent PRL19780410-001 (Apr. 10, 1978) (LEGIS, Rules database); *see also* 131 CONG. REC. S6,367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (the Chair responded that a particular conference report would violate section 303(a)); 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report; point of order waived).

An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *See* 132 CONG. REC. S7,973-74, S8,169, S8,207-09 (June 19, 23 & 24, 1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues in violation of section 303(a)).

[258] *Cf. infra* note 431 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

vides --

(1) new budget authority[259] for a fiscal year;

(2) an increase or decrease in revenues[260] to become effective during a fiscal year;

(3) an increase or decrease in the public debt limit[261] to become effective during a fiscal year;

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[259] *See, e.g.*, 133 CONG. REC. S5,381-83 (1987) (point of order by Sen. Chiles on amendment by Sen. Boschwitz).

Section 3(2) defines "budget authority." *See supra* p. 10-11.

[260] *See, e.g.*, 132 CONG. REC. S8,207-09 (1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues); 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues); 131 CONG. REC. S8,806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues); 131 CONG. REC. S6,367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; conference report that would raises revenues).

[261] The public debt limit is set at 31 U.S.C. § 3101.

(4) new entitlement authority[262] to become effective during a fiscal year; or

(5) new credit authority[263] for a fiscal

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[262] Section 303(a) prohibits legislation that would create entitlement authority that would become effective before Congress has agreed to the budget resolution for the appropriate fiscal year, and such legislation would not fall within any exception in section 303(b). 129 CONG. REC. S9,826, S9,845, S9,852 (1983); Senate Precedent PRL19830713-004 (Sept. 13, 1983) (LEGIS, Rules database). In other words, an entitlement that begins in an out-year violates section 303(a). 130 CONG. REC. S7,070-71, S7,102-12, S7,175, S7,181 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database); *see also* 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report if that conference report contained entitlements to become effective in out-years; point of order waived).

Entitlements begin in the year payments are made, not when benefits vest. 130 CONG. REC. S7,107 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database) (inquiry of Sen. Armstrong).

Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 483.

[263] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

year,

until the concurrent resolution on the budget for such fiscal year has been agreed to pursuant to section 301.[264]

(b) EXCEPTIONS. -- Subsection (a)[265] does not apply to any bill or resolution --

(1) providing new budget authority[266] which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or

(2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.[267]

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[264] *See supra* pp. 59-93.

[265] *See supra* pp. 106-110.

[266] This exception for "budget authority" does not apply to "entitlement authority." *See supra* note 262.

Section 3(2) defines "budget authority." *See supra* p. 10-11.

[267] *See, e.g.*, 131 CONG. REC. S8,806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues in the year for which the budget resolution in conference would provide).

(continued...)

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[267](...continued)

Under a precedent of October 5, 1978, sometimes called "the Long precedent," section 303(a) applies -- with respect to revenues at least -- only during the period from January 1 through the adoption of the budget resolution. *See* 124 Cong. Rec. S17,238-44 (Oct. 5, 1978). The precedent arose from the Senate's vote to overturn a correct ruling of the Chair. Thus, one must glean the meaning of the precedent from the debate before the vote.

Much of the debate focused on the issue of what Congress meant by the words "the fiscal year to which the concurrent resolution applies." Senator Muskie, the Chairman of the Committee on the Budget, correctly argued that "the fiscal year" was the year next after the year dealt with by the budget resolution most recently adopted. Recall that he was speaking in October of 1978:

> [T]he words "budget year" referred to mean the budget year for which no first concurrent resolution has been adopted. . . . At this point in time, that is 1980, because 1979 has been acted upon. So those words "budget year" in that legislative history mean 1980.

Id. at S17,240 (statement of Sen. Muskie).

Under Senator Muskie's interpretation, the Senate was considering the fiscal year 1980 budget resolution from May 17, 1978 (the date of adoption of the budget resolution for fiscal year 1979), to May 24, 1979 (the date of adoption of the budget resolution for fiscal year 1980). During this period, section 303(a) would prohibit changing revenues in fiscal year 1980.

Senator Long, on the other hand, in the view that would prevail in the vote of the Senate, argued that the Senate con-

(continued...)

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[267](...continued)
sidered fiscal year 1980 only after the beginning of calendar year 1979:

> Here we are in calendar year 1978. We are in fiscal year 1979. We are talking about a cut to go into effect in both calendar year and fiscal year 1980, the following year.
>
> . . . .
>
> What was the whole intent of the budget process? It was to say that when the Budget Committee meets in January and they go to work on the budget resolution, you cannot cut the revenue that is available to them for that fiscal year and you cannot increase the spending, because that would mess up the budget process. The Budget Committee would not know how much revenue they had coming in. They have to know how much revenue they can rely upon so that they can make the budget and try to cut the cloth to fit the pattern. That was the purpose of the limitation.
>
> . . . .
>
> . . . Let me just explain the situation in a word. We are presently bound by the second concurrent budget resolution for fiscal year 1979.

Id. at S17,238, S17,239, S17,242 (statements of Sen. Long).

Here are more complete excerpts from the debate:

> MR. MUSKIE. Mr. President, I make the point of order, pursuant to section 303(a) of the Congressional Budget Act, that the amendment offered by the

(continued...)

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[267](...continued)
Senator from Delaware (Mr. ROTH) involves a decrease in revenues for fiscal year 1980 before the first concurrent resolution on the budget for that year has been agreed to, and is not within the exception provided by section 303(b)(2) of the Budget Act, and has not received a waiver pursuant to section 303(c) of that act.

The PRESIDING OFFICER (Mr. BAYH). The Chair, in responding to the point of order of the Senator from Maine, is glad to respond, after being advised by the Parliamentarian upon just having occupied the chair. The Chair has been advised that the following is the correct interpretation of the point of order raised by the Senator from Maine:

The point of order having been made under section 303(a) of the Budget Act that the pending amendment provides for a decrease in revenues to become effective during a fiscal year before the first concurrent resolution on the budget for such year has been agreed to and is not excepted by section 303(b), which provides that:

> "Subsection (a) does not apply to any bill or resolution
>
> ". . .
>
> "(2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies,"

(continued...)

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[267](...continued)
and that no waiver has been provided under section 303(c), the Chair sustains the point of order for the reasons that --

First. The legislative history of section 303, which must be looked at because the section itself is not absolutely clear, states:

> Legislation that provides budget authority or changes in revenues to be initially available in fiscal years which are *two or more ahead* (emphasis supplied) may be taken up before action on the first concurrent resolution for that year.

Second. And the uniform practice of the Senate, based upon the interpretation of the Budget Committee, and acquiesced in by the other standing committees, including the Finance Commit[tee, which have reported waivers of section 303](a) each time a bill has been reported which first took effect the following fiscal year.

That is the interpretation that has been made for the Chair relative to the point of order made by the Senator from Maine.

. . . .

Mr. LONG. . . .

. . . .

There is no dispute that we can cut taxes for 981. We are now in fiscal 1979, though we are in

(continued...)

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[267](...continued)
calendar year 1978. We can cut taxes in 1981 without needing a budget waiver. 1981; that is a long time from now.

We are not arguing about that. I agree that we can cut taxes in 1981. That does not have anything to do with what we can do in 1980. But the Parliamentarian is relying upon something that says that we can vote to cut taxes in 1981 to say we cannot cut taxes in 1980.

. . . .

I am reading from page 44 of the Senate Report 93-638, the Rules Committee report language dealing with this section. The exception applies to:

> Bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year.

Here we are in calendar year 1978. We are in fiscal year 1979. We are talking about a cut to go into effect in both calendar year and fiscal year 1980, the following year.

Let me read it again.

The exception deals with:

> Bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year. Again, the need for legislation well in advance of the year in which it takes effect under this

(continued...)

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[267](...continued)

> exception. Changes in the general tax rates, for example, are often graduated over a period of years in order to give predictability and allow for planning by those affected.
>
> . . . .

What was the whole intent of the budget process? It was to say that when the Budget Committee meets in January and they go to work on the budget resolution, you cannot cut the revenue that is available to them for that fiscal year and you cannot increase the spending, because that would mess up the budget process. The Budget Committee would not know how much revenue they had coming in. They have to know how much revenue they can rely upon so that they can make the budget and try to cut the cloth to fit the pattern. That was the purpose of the limitation. It made sense. Nobody on the Finance committee objected to that part of it. We said:

> If we want to cut taxes beyond what the Budget Committee is recommending, we will do it in future years.

If we vote the tax cut proposed by the Roth amendment for 1980, that will not interfere with the Budget Committee. It simply means that when we come back in the following year they would have to take into account the fact that there would be a tax cut to take effect in January of the following year.

Mr. President, it was the intent of the Senate, and it was the intent of the House, that we comply

(continued...)

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[267](...continued)
with the budget resolution within the year that the budget applied to. It was not intended to apply to future years.

. . . .

Mr. CURTIS. Is it true that the prohibition against cutting the revenue within a year is for the purpose of having a fixed figure upon which those who make the budget can rely?

Mr. LONG. That is the idea.

Mr. CURTIS. To cut taxes for a subsequent year, in this case 1980, does not interfere with the budget procedure, does it?

Mr. LONG. For better or for worse, it does not. It may be that neither the Budget Committee nor the Senate might want to cut taxes in the following year, but a Senator has the right to offer an amendment that does so, and he does not need the approval of the Budget Committee, or a waiver.

Mr. CURTIS. The Senator's argument is very sound, it is logical. The purpose of this rule is to facilitate budgetmaking and not have the amount of revenue fluctuating while they are in the process for that year. It was never intended as giving the Budget Committee a veto over what was done in future years.

. . . .

MR. MUSKIE. . . .

(continued...)

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[267](...continued)

. . . .

Senator Long argues that because the Budget Act does not permit us to challenge tax cuts which take effect in 1981 or 1982 or 1983 or 1984 or 1985 or any year thereafter -- and that is a fact -- as a result, we ought not to have any control over 1980 and 1979. That is the effect of his interpretation. As I shall try to point out, that means that the budget process would have no control over revenues.

He concedes that, with respect to a year for which we are writing a budget resolution, we ought to have control over revenues. Yet if we were to adopt his interpretation with respect to section 303 as it applies to 1980, then that section, if applied a year ago to 1979, would have permitted the Committee on Finance to enact any tax cut it pleased, whatever its impact on fiscal 1979 revenues.

What he is saying is that until January 1, the Committee on Finance can recommend any tax bill it pleases; once January 1 comes around, then we have to worry about the first concurrent resolution for the next fiscal year, but we do not worry before January 1.

Mr. President, it is a ridiculous theory. . . .

. . . .

. . . But we have to understand what the language of section 303 means. The best authority on that is the legislative history of the act, which, with all respect to the distinguished chairman of the Finance Committee, he misinterpreted. Page 894 of the leg-

(continued...)

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[267] (...continued)
islative history of the Budget Act refers to bills or resolutions which increase or decrease revenues in a fiscal year following the budget year -- that is the language the Senator read. What he did not tell us is that the words "budget year" referred to mean the budget year for which no first concurrent resolution has been adopted. That is budget year 1980. At this point in time, that is 1980, because 1979 has been acted upon. So those words "budget year" in that legislative history mean 1980. That sentence means 1981 is open, as the Senator and I agree, but not 1980 -- because the words "budget year" throughout this legislative history mean budget year for which the first concurrent resolutions described in section 301(a) are applicable.

What I am saying is that if the Senator's interpretation prevails, not only do we wipe out the budget process with respect to 1980 revenues, but we endanger the process for revenues altogether, because I see no point in trying to protect the budget from January 1 to May 15 if, prior to that time, Congress is free to enact any tax cuts for any fiscal year that it chooses. We must protect the next fiscal year from year to year. The fact that we do not have protection for all out-years is bad enough. Incidentally, the bill that Congressman ULLMAN introduced initially prohibited tax increases in all out-years for which no first concurrent resolution has been adopted. The Finance Committee and the Ways and Means Committee, to protect their turf, got that section amended so that we have protection, if we have it, only for the current fiscal year and the next one.

. . . .

(continued...)

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[267](...continued)

I ask unanimous consent that I may have printed in the RECORD the five instances demonstrating the truth of the Parliamentarian's statement in that respect, the practice of the Senate with respect to sections 303(a) and 303(b)(2), including the practice of the Committee on Finance.

There being no objection, the material was ordered to be printed in the RECORD as follows:

MEMORANDUM

To Senator Muskie.
From John McEvoy.
Date September 26, 1978.
Subject operation of section 303.

. . . .

. . . For example, Section 303(a)(2) barred consideration of tax changes for fiscal year 1979 on May 14, 1978, prior to the first budget resolution for fiscal year 1979 on May 16, 1978. Pursuant to Section 303(b), however, tax changes for fiscal year 1980--"the fiscal year following the fiscal year to which the concurrent resolution applies"--would have been in order on May 14.

After the first resolution for FY'79 had been agreed to on May 16, consideration of FY 1979 tax changes were in order. But Section 303(a) barred revenue changes "which first became effective" in fiscal

(continued...)

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[267](...continued)

1980, the next year for which no first concurrent resolution had been agreed to.

Section 303(b)(2), which applied to fiscal year 1980 and years thereafter prior to May 16, applied thereafter to FY 1981 and the years thereafter.

. . . .

LEGISLATIVE HISTORY

. . . .

Here is how the Rules Committee report described the exception, now contained in Section 303(b), to Section 303 for revenue bills. The exception was created to provide that "legislation that provides budget authority or changes in revenues to be initially available in fiscal years which are two or more years ahead may be taken up before action on the first concurrent resolution for that year."

. . . .

PRACTICE OF THE SENATE

. . . . The Senate has . . . followed a practice since the effective date of Section 303 which is totally consistent with the interpretation of that Section and the exception contained in Section 303(b)(2) as set forth in this memorandum . . . .

(continued...)

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[267] (...continued)

> The Finance Committee has, for example, sought waivers of the application of Section 303(a) each time it has reported a tax bill which first took effect the following fiscal year.

. . . .

Mr. MUSKIE. . . .

. . . .

. . . If we want to protect the budget process on the revenue side, the Parliamentarian's ruling must be sustained.

. . . .

Mr. LONG. Let me just explain the situation in a word. We are presently bound by the second concurrent budget resolution for fiscal year 1979. I referred to the year following the budget year as fiscal year 1980. The Senator says that 1980 is the budget year I am talking about, and that 1980 is the budget year this committee report makes reference to when it talks about bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year.

. . . .

Mr. MUSKIE. . . .

. . . .

(continued...)

After May 15 of any calendar year, subsection (a)[268] does not apply in the House of Representa-

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[267](...continued)

> I repeat: The only point that needs to be made about this is that if the argument of the Senator from Louisiana prevails, not only will you wipe out budget discipline for 1980, but also, you will wipe it out for all the years in the future. I cannot imagine that the 7½-month hole in the calendar year will be overlooked as a wide-open opportunity by any Senator, including those who are ingenious in the writing of tax laws, to write any tax bill they like -- tax cuts to the roof. Because that is what the Senator is arguing we ought to have, a big 7½-month open door from May 15 to January 1. That is his interpretation of the Budget Act. Incidentally, the date January 1 does not appear anywhere in the Budget Act. But he says that is where the Budget Committee begins to have a responsibility with respect to revenues. From January 1 to May 15 is the only time we have any business to consider tax legislation for the coming fiscal year. The Budget Act does not refer to January 1. If we follow his interpretation, there is a 7-month open door, from May through December, when legislation, irrespective of its impact on the budget process and future budgets, can be enacted into law. And I cannot imagine that that door will be left closed very long.

Id. at S17,238-44.

The Senate then went on to overturn the ruling of the Chair by a vote of 48 to 38. *Id.* at S17,244.

[268] *See supra* pp. 106-110.

tives to any general appropriation bill,[269] or amendment thereto, which provides new budget authority[270] for the fiscal year beginning in such calendar year.

(c) WAIVER IN THE SENATE.[271] --

(1) The committee of the Senate which reports any bill or resolution (or amendment thereto) to which subsection (a)[272] applies may at or after the time it reports such bill or resolution (or amendment), report a resolution[273]

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[269] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[270] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[271] Note that the Senate may waive section 303(a) pursuant to section 904(b). *See infra* pp. 287-290.

Compare the parallel provisions for waiver in the Senate in section 402(c) as originally enacted in 1974 but repealed in 1985. *See infra* note 517.

[272] *See supra* pp. 106-110.

[273] *See, e.g.*, S. Res. 242, 100th Cong., 1st Sess., 133 CONG. REC. S15,247 (Oct. 28, 1987) (regarding S. 1184, the Airport and Airway Capacity Expansion Act; approved 92-5); S. Res. 83, 100th Cong., 1st Sess., 133 CONG. REC. S1,671 (Feb. 4, 1987) (regarding S. 382, Urban Mass Transportation Authorization Act; approved 84-16); S. Res. 85, 100th Cong., 1st Sess., 133 (continued...)

to the Senate

> **(A) providing for the waiver of subsection (a)[274] with respect to such bill or resolution (or amendment), and**
>
> **(B) stating the reasons why the waiver is necessary.**

The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

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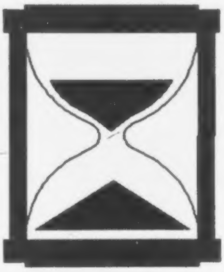
[273] (...continued)
CONG. REC. S1,452 (Feb. 2, 1987) (regarding S. 387, Federal Aid-Highway Act; approved 91-1).

[274] *See supra* pp. 106-110.



(2) During the consideration of any such resolution, debate shall be limited[275] to one hour, to be equally divided between, and controlled by, the majority leader and minority leader or their designees, and the time on any debatable motion or appeal shall be limited[276] to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No

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[275] Contrast the case under a motion to waive pursuant to section 904(b), where Senators may debate without a time limit. *See infra* note 587.

[276] Contrast the cases for appeals generally under section 904(d) (*see infra* pp. 291-292), and for appeals during consideration of budget resolutions and reconciliation legislation under section 305(b)(2) (*see infra* pp. 136-153), where Senators may debate for one hour.

amendment to the resolution is in order.[277]

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a)[278] **shall not apply with respect to the bill or resolution (or amendment thereto) to which the resolution so agreed to applies.**

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[277] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

Cf. 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

[278] *See supra* pp. 106-110.

PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304.[279] (a) IN GENERAL. -- At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301,[280] and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

(b) MAXIMUM DEFICIT[281] AMOUNT[282] MAY NOT BE EXCEEDED.[283] -- The provisions of section 301(i)[284]

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[279] Section 304 is codified as amended at 2 U.S.C. § 635.

[280] *See supra* pp. 59-93.

[281] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[282] Section 3(7) defines "maximum deficit amount." *See supra* pp. 20-22.

[283] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 304(b) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See*
(continued...)

shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto[285] and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i)[286] (and amendments thereto and confer-

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[283](...continued)
infra p. 566.

Section 275(b)(2)(B) of Gramm-Rudman-Hollings provides that section 304(b) itself also expires on September 30, 1993. *See infra* p. 566.

Note also the provisions for the suspension of section 304(b) after declaration of a recession pursuant to section 254(a) of Gramm-Rudman-Hollings. *See infra* pp. 449-458.

Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

[284] *See supra* pp. 88-93.

[285] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[286] *See supra* pp. 88-93.

ence reports thereon).

(c)[287] ECONOMIC ASSUMPTIONS. -- The provisions of section 301(g)[288] shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto[289] and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(g)[290] (and amendments thereto and conference reports thereon).[291]

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[287] Section 208(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subsection (c). Pub. L. No. 100-119, § 208(b), 101 Stat. 754, 786 (Sept. 29, 1987).

[288] *See supra* pp. 86-88.

[289] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[290] *See supra* pp. 86-88.

[291] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 305.[292] (a) PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE. --

(1) When the Committee on the Budget of the House of Representatives has reported any concurrent resolution on the budget, it is in order at any time after the fifth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution by the Committee on the Budget has been available to Members of the House and, if applicable, after the first day (excluding Saturdays, Sundays, and legal holidays) following the day on which a report upon such resolution by the Committee on Rules pursuant to section 301(c)[293] has been available to Members of the House (even though a previous motion to the same effect

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[292] Section 305 is codified as amended at 2 U.S.C. § 636.

[293] *See supra* pp. 71-71.

has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of up to four hours for debate on economic goals and priorities.

(4) Only if a concurrent resolution on the budget reported by the Committee on the budget of the House sets forth the economic goals (as described in sections 3(a)(2)[294] and 4(b)[295] of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)[296]) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the

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[294] *See supra* note 177.

[295] *See supra* note 141.

[296] *See supra* pp. 59-63.

previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

(b) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS. --

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto[297] and debatable motions and appeals in connection therewith, shall be lim-

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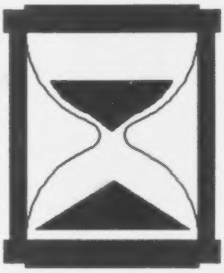
[297] The Committee on the Budget may modify the budget resolution on the floor. *See* 126 CONG. REC. S4,516 (May 5, 1980) (statement of Chairman Hollings). The Committee on the Budget may authorize a Senator to modify a Committee amendment to a budget resolution. 127 CONG. REC. S2,697 (Mar. 26, 1981) (statement of Majority Leader Baker).

A committee need not have a formal meeting to authorize the offering of a committee amendment on its behalf; rather, a majority of the committee may so authorize by polling. 128 CONG. REC. S9,014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982).

At the end of the time for debate on a bill or resolution, Senators may call up amendments for the Senate to vote on without debate. *Cf.* 128 CONG. REC. S15,711 (1982); Senate Precedent PRL19821220-004 (Dec. 20, 1982) (LEGIS, Rules database) (inquiries of Sen. Byrd; where a unanimous consent agreement provides for a vote at a time certain, when that time arrives amendments may be offered and voted on without debate). (The Chair uses precedents under unanimous consent agreements to interpret provisions of the Congressional Budget Act that use the language used in unanimous consent agreements. *See* 127 CONG. REC. S3,148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 305).)

ited to not more than 50 hours,[298] except that with respect to any concurrent resolution referred to in section 304(a)[299] all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.



(2)[300] Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent

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[298] In contrast, section 310(e)(2) limits debate on a reconciliation bill to 20 hours. *See infra* p. 192.

[299] *See supra* p. 128.

[300] Section 904(c) provides that the Senate may waive or suspend section 305(b)(2) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 290; *see also* 132 CONG. REC. S12,986; Senate Precedent PRL19860919-003 (Sept. 19, 1986) (LEGIS, Rules database) (vote of three-fifths of the Senators duly chosen and sworn is required to waive the germaneness requirement contained in section 305(b)(2)); subsection (b) of the Byrd Rule, *infra* p. 596 (same, as applied to reconciliation).

resolution, and debate on any amendment to an amendment, debatable motion,[301] or ap-

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[301] When a Senator makes a motion to waive under section 904(b) during the consideration of a reconciliation bill, debate is limited to one hour, as specified by section 305(b) and applied to reconciliation by section 310(e). 131 CONG. REC. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database).

The motion is subject to a motion to table when that time has expired or been yielded back. *Id.*

Any motion in the Senate must be submitted in writing upon the request of any Senator. *Id.*

A Senator must control time or have time yielded to him to make a parliamentary inquiry when the Senate is considering a matter under controlled debate time. *Id.*

Compare the similar provisions for control and division of time on motions to recommit in paragraph (5), which do not provide for time for the minority leader. *See infra* p. 155.

Despite the legislative language of this paragraph and paragraph (5), the Chair once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader. 128 CONG. REC. S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2), and, more particularly, section 305(b)(5), to reconciliation bills, section 305(b)(5) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

peal[302] shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No

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[302] Compare the similar provisions for control and division of time on appeals in section 904(d), which do not provide for time for the minority leader. *See infra* p. 291.

Despite the legislative language of this paragraph and section 904(d), the Chair once responded to an inquiry that time for debate on an appeal from the ruling of the Chair during consideration of a reconciliation bill was controlled by and evenly divided between the Senator who made the appeal and the majority leader. 128 CONG. REC. S8,702-03, S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by the manager, Senator Packwood, during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2) to reconciliation bills, section 305(b)(2) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the Senator who made the appeal and the manager of the reconciliation bill, except that in the event that the manager favored the appeal, the minority leader or the minority leader's designee would control the time in opposition.

amendment[303] that is not germane[304] to the

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[303] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[304] In summary, an amendment is germane *only* if it:

-- strikes a provision,

-- changes a number or date,

-- restricts the authority or scope of the bill without adding any new subject matter, or

-- states a sense of the Senate or Congress within the jurisdiction of the Budget Committee (or in application to reconciliation, some reporting committee).

The Chair uses precedents regarding germaneness under unanimous consent agreements to interpret this provision of the Congressional Budget Act, which uses the language used in unanimous consent agreements in the usual form. 127 Cong. Rec. S3,148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 305).

The Chair clarified the precedents on germaneness on April 22, 1982. *See* 128 Cong. Rec. S3,879-82 (1982). The first headnote of the Parliamentarian's record of that precedent summarizes:

> The germaneness test is much more severe in the Senate than a simple subject matter test. It is basically a technical amendment test, and adding language to a

(continued...)

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[304](...continued)

> bill which expands the powers available under that bill has been ruled nongermane. Amendments which restrict powers granted by a bill have been ruled germane. In addition, amendments which propose to strike language in a bill regardless of their effect upon the powers granted in a bill are per se germane.

Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

The precedent arose in the Senate debate of the motion to proceed to S. 1680, the Criminal Code Reform Act of 1981. Senators McClure and Helms propounded a series of parliamentary inquiries of the Presiding Officer (Senator Cochran). *Id.*

In a series of inquiries and responses, Senator McClure and the Chair made clear than an amendment may permissibly restrict the meaning of a section, but could not broaden its effect:

> Mr. McCLURE. Mr. President, I have the following parliamentary inquiry: Is the amendment . . . nongermane because it introduces a new word which changes the meaning of the amended section, in that it replaces, "interferes with, hinders, delays, or prevents," with "causes interference with, or hindrance, delay, or prevention of?"
>
> The PRESIDING OFFICER. Changing the meaning of the section is permissible if the change does not broaden the effect of the section.
>
> Mr. McCLURE. It would not be germane because it adds new language, if that new language

(continued...)

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[304](...continued)
does not change the meaning -- excuse me -- if it does not add new material in spite of the fact that it may change the meaning.

The PRESIDING OFFICER. It is permissible within the germaneness standard to change the meaning so long as you do not broaden the meaning.

Mr. McCLURE. Mr. President, I understand the words: I am not sure I understand the implication. I can change it but not broaden it. That is one of my concerns.

The PRESIDING OFFICER. The meaning could be restricted by the change.

Mr. McCLURE. It could be restricted but not broadened?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. And the addition of the word "causes" in that particular place -- does that restrict or does that expand?

The PRESIDING OFFICER. The original meaning included both a conduct and a result test. The new meaning only includes a result test.

Mr. McCLURE. Therefore, it is a restriction? Do I understand the Chair correctly?

The PRESIDING OFFICER. The Senator is correct.

(continued...)

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[304](...continued)

Mr. McCLURE. The second inquiry: Is the amendment on page 20 . . . nongermane because it introduces new subject matter not pertaining to criminal law in that it adds a new section bringing the bill into conformity with the Budget Act?

The PRESIDING OFFICER. That amendment restricts the power which would be otherwise available; therefore, it would be germane.

Mr. McCLURE. Is the amendment on page 3, line 2, nongermane because it adds new crimes to the list of exemptions from the inchoate offenses?

The PRESIDING OFFICER. If the amendment added a new crime to a list of crimes for which penalties could be assessed, it would be nongermane. This amendment adds a restriction on the bill; therefore, it is germane.

Mr. McCLURE. That is true because, Mr. President, it adds to a list of exemptions; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Is the amendment on page 12, line 4, nongermane because it adds a new section dealing with safety offenses to the bill?

The PRESIDING OFFICER. This indeed does add a new crime, and therefore would be considered nongermane.

(continued...)

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[304] (...continued)

> Mr. McCLURE. Is the amendment on 21, line 1, nongermane because it references in a new section?
>
> The PRESIDING OFFICER. This amendment expands the effect of the bill and therefore is nongermane.
>
> . . . .
>
> Mr. McCLURE. Amendment No. 1287 . . . would prohibit funds from the victims compensation program being used to perform abortions. Would that amendment be nongermane?
>
> The PRESIDING OFFICER. This amendment appears to be a restrictive amendment, and therefore it would be germane.

128 Cong. Rec. S3,879 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). For additional authority for the proposition that an amendment that on its face restricts the effect of the bill or amendment is germane, see 128 Cong. Rec. S15,711 (1982); Senate Precedent PRL19821219-002 (Dec. 19, 1982) (LEGIS, Rules database) (inquiry of Sen. Harry F. Byrd, Jr.); 128 Cong. Rec. S11,844 (1982) (inquiry of Sen. Robert C. Byrd regarding Weicker amendment).

In another set of inquiries on April 22, 1982, Senator McClure and the Chair made clear that an amendment that would strike language is *always* germane:

> Mr. McCLURE. . . .
>
> Amendment No. 1285 would strike section 402.

(continued...)

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[304](...continued)
Since it would be an amendment to strike, it would not be subject to the germaneness test; is that correct?

The PRESIDING OFFICER. No amendment to strike, regardless of its effect, can be ruled nongermane.

. . . .

Mr. McCLURE. Amendment No. 1288 would restore current law with respect to the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms and would affect the bill by removing several broad jurisdictional expansions, but it would add to the bill current law while restricting the bill with respect to the broadening of jurisdiction. Would that be nongermane?

The PRESIDING OFFICER. Amendment 1288, since it is fashioned as an amendment to strike, is per se germane.

. . . .

Mr. McCLURE. Amendment No. 1290 would repeal the order of notice provisions which would allow businessmen to be ordered to notify customers to sue them. Would the amendment be in order?

The PRESIDING OFFICER. Since the amendment is an amendment to strike, it would be per se germane.

128 CONG. REC. S3,879-80 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

(continued...)

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[304](...continued)

A third set of inquiries indicates that an amendment that changes a figure is germane:

> Mr. McCLURE. Amendment No. 1289 would restore current law with respect to the general level of criminal fines and would remove the structure that has been created in the proposed legislation. Would that amendment be nongermane?
>
> The PRESIDING OFFICER. The amendment appears to be an attempt to strike a figure and substitute in lieu thereof another figure and therefore would be germane.

Id.

In one inquiry, Senator McClure and the Chair made clear that an amendment that would substitute new language that is not restrictive of the bill would not be germane even if it dealt with the same subject matter:

> Mr. McCLURE. . . . Amendment 1295 would restore current law with respect to first degree murder. Would that amendment be germane?
>
> The PRESIDING OFFICER. This is another amendment that is in fact two amendments. The first is an amendment to strike, and would be germane. The second expands the effect of the bill, and would not be germane.
>
> Mr. McCLURE. I might pursue that one step further, in that the subject matter to be added with respect to line 4 of the amendment, being the numeral

(continued...)

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[304] (...continued)
1111, is language that deals with the same subject matter but in a manner different from that contained in the bill, in the first half of the amendment, which would be stricken.

The PRESIDING OFFICER. The germaneness test has never been interpreted as a subject matter test. It is basically a technical amendment test, and even expanding the bill dealing with the same subject matter has been ruled nongermane.

Mr. McCLURE. I will not debate the issue with respect to this particular amendment. I simply wish to point out that that which is in 1111 is the same subject matter -- does not expand the bill. It is a substitution for the bill language with respect to the law relating to first degree murder. If we get to that point, I might wish to discuss that a little further, because I am not certain in this instance that if you look past the number to what is contained in page 522, line 2, it would be discerned that 1111 is the same subject matter and not a broadening of the subject matter of the bill.

I might renew that parliamentary inquiry when, as, and if we get to the point when that becomes pertinent.

The PRESIDING OFFICER. The Senator has not propounded an additional inquiry?

Mr. McCLURE. No; I have not.

Id. at S3,880.

Similarly, another precedent indicates that an amendment

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[304](...continued)
that adds nonrestrictive language is not germane, even if the amendment is relevant to the bill. 131 CONG. REC. S17,507 (1985); Senate Precedent PRL19851212-001 (Dec. 12, 1985) (LEGIS, Rules database). In the precedent of December 12, 1985, the pending bill, S. 1396, provided for the settlement of claims relating to trust allotments of land granted to certain Native Americans and for judicial review of compensation findings by the Secretary of the Interior relating to those claims. A unanimous consent agreement required that amendments be germane and relevant. On a point of order by Senator Durenberger, the Chair ruled not germane a Melcher amendment that required the United States to provide legal assistance to allottees or heirs regarding the merits of their claims under the bill. *Id.*

A ruling of December 3, 1985, provides another precedent for the proposition that an amendment that adds nonrestrictive language to a bill is not germane. 131 CONG. REC. S16,735 (1985); Senate Precedent PRL19851203-010 (Dec. 3, 1985) (LEGIS, Rules database). The pending bill then (S. 1884, the farm credit system bill) governed by a unanimous consent agreement that required that amendments be germane, provided for three members of a board to be elected by farm credit banks and two members to be appointed by the Chairman of another board. *Id.* Senator Boren's amendment proposed to reduce from three to two those members to be elected by farm credit banks, and provided that one member be appointed by the Secretary of Agriculture. *Id.* The Chair ruled as follows:

> The PRESIDING OFFICER (Mr. Gorton of Washington). germaneness of the amendment is required by the unanimous consent agreement. The amendment of the Senator from Oklahoma does add new language which does not restrict powers contained

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[304](...continued)

> in the bill and it is, therefore, not germane. The point of order is sustained.

Id.

An amendment that would have limited a proposed increase in a tax contained in a bill, but also proposed to increase another tax not contained in the bill was not germane. 128 Cong. Rec. S8,884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (point of order by Sen. Dole to Thurmond amendment to the Tax Reconciliation Act of 1982).

Once the Senate has stricken language, that language can no longer form the basis for germaneness. 128 Cong. Rec. S3,880 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). Senator McClure and the Chair set this precedent on the same April 22, 1982, set of inquiries noted above:

> Mr. McCLURE. . . .
>
> Amendment No. 1296: The amendment would strike section 1325. Is that amendment germane?
>
> The PRESIDING OFFICER. This amendment is two amendments. The first is an amendment to strike, and would be germane. The second appears to expand the effect of the bill, and therefore would not be germane.
>
> Mr. McCLURE. If, as a matter of fact, the language contained in "1503, 1505," referred to in line 4 of the amendment, is more restrictive than the language being stricken in the first half of the amend-

(continued...)

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[304] (...continued)
ment, would it then survive the germaneness test?

> The PRESIDING OFFICER. Once language has been stricken, it no longer sets the parameters for germaneness.
>
> Mr. McCLURE. Even though it is in the same amendment?
>
> The PRESIDING OFFICER. The Chair has observed that this is not one amendment but two amendments.

Id.

The Chair will consider germane per se amendments reported by or offered by authority of the committee of jurisdiction, and such amendments may form part of the basis for determining germaneness. 128 CONG. REC. S9,014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982). The Chair will consider germane an amendment that is germane to an amendment reported by a committee, even if the committee amendment itself contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. 128 CONG. REC. S8,702-04 (1982); Senate Precedent PRL19820720-002 (July 20, 1982) (LEGIS, Rules database) (debate on reconciliation bill). It follows, then, that the Chair will consider per se germane an amendment reported by a committee even if the committee amendment contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. *See id.*

(continued...)

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[304](...continued)

A Senator may offer again on behalf of the committee that had reported the measure an amendment that the Chair had ruled out of order as nongermane when offered by the Senator in the Senator's individual capacity. *See* 128 Cong. Rec. S9,014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (Dole amendment to the Tax Reconciliation Act of 1982).

The Chair will consider germane an amendment that is germane to an amendment for which the Senate has waived the germaneness requirement of the Congressional Budget Act. 132 Cong. Rec. S12,986 (1986); Senate Precedent PRL19860919-004 (Sept. 19, 1986) (LEGIS, Rules database); 131 Cong. Rec. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

A motion under section 904(b) to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction. 131 Cong. Rec. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

Setting the time or sequence for a vote on an amendment does not implicitly waive the germaneness requirement. *See* 129 Cong. Rec. S1,807 (1983); Senate Precedent PRL19830301-001 (Mar. 1, 1983) (LEGIS, Rules database) (inquiries of Sens. Metzenbaum, Byrd, and Baker regarding cloture).

The germaneness requirement does not apply to a motion to recommit a reconciliation bill with instructions to report back forthwith a specific amendment that would bring a committee into compliance with the reconciliation instructions in

(continued...)

provisions of such concurrent resolution shall be received.[305] Such leaders, or either of

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[304](...continued) the budget resolution. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); *see also infra* note 379.

For more on the subject of germaneness of amendments, see F. RIDDICK, SENATE PROCEDURE 50-52, 234-38, 1085-92 (1981).

In contrast to the germaneness test, the test for relevance is a looser, subject matter test. *See infra* note 826.

Also in contrast to the germaneness test, the test for extraneousness (in the context of reconciliation) depends on another set of criteria regarding, among other things, whether the provision in question reduces the deficit. *See* the *Special Issue* discussion *infra* pp. 593-650.

[305] The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. 127 CONG. REC. S3,148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database). On April 1, 1981, the following debate took place before time on the amendment had expired:

> Mr. LONG. . . . .
>
> . . . . Mr. President, I make the point of order that this amendment is not germane to the bill.
>
> Mr. METZENBAUM. Mr. President, I believe the Senator's pint of order is premature.

(continued...)

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[305](...continued)

The PRESIDING OFFICER. The Chair would inform the Senator from Louisiana that a point of order is not in order at this time.

Mr. LONG. Mr. President, the reorganization law says that an amendment that is not germane will not be received.

Mr. METZENBAUM. But it also says it is not in order until time for debate on the amendment has expired.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

The point of order would be in order after the time for debate on the amendment has expired.

Mr. LONG. Mr. President, might I just discuss it? We have before us an amendment which, under the law, is an amendment that is not to be received. Therefore, I make the point of order that this amendment is out of order. It should not have been received and there is nothing to debate.

The PRESIDING OFFICER. The Chair is of the opinion that the point of order may or may not be correct. It looks as if it might be correct. But the language "shall not be received" is standard language used by the Senate in unanimous-consent agreements which impose germaneness on amendments. Under the precedents of the Senate, it has been held uniformly that, under those circumstances, a point of order against an amendment on the ground that it is

(continued...)

them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) Following the presentation of opening

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[305] (...continued)
not germane may not be made until the time of the amendment has expired.

Id.

Cf. supra note 255 (Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement; regarding section 303(a)).

Contrast the rule under cloture, where the Chair will take the initiative to rule out of order nongermane amendments without waiting for a point of order from the floor. *See, e.g.*, 130 Cong. Rec. S11,111-12 (1984); Senate Precedent PRL19840913-001 (Sept. 13, 1984) (LEGIS, Rules database); 128 Cong. Rec. S11,844 (1982); Senate Precedent PRL19820920-002 (Sept. 20, 1982) (LEGIS, Rules database) (inquiry of Sen. Robert C. Byrd).

For further examples of the application of the point of order under section 305(b), see, *e.g.*, 133 Cong. Rec. S17,652-53 (Dec. 10, 1987) (Harkin motion to waive rejected 47-49 regarding his amendment no. 1257 to S. 1920, the Omnibus Budget Reconciliation Act of 1987); 133 Cong. Rec. S17,600 (Dec. 10, 1987) (Majority Leader Byrd's motion to waive section 305(b) and other sections approved 81-13 regarding specified amendments and motion to recommit regarding S. 1920, the Omnibus Budget Reconciliation Act of 1987).

statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2)[306] and 4(b)[307] of the Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)[308]) set forth in such resolution are designed to achieve, shall it be in order[309] to offer to such resolution an amendment relat-

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[306] *See supra* note 177.

[307] *See supra* note 141.

[308] *See supra* pp. 59-63.

[309] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

ing to such goals,[310] and such amendment shall be in order[311] only if it also proposes to alter such estimates, amounts, and levels in germane[312] fashion in order to be consistent with the goals proposed in such amendment.

(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent

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[310] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[311] *Id.*

[312] For a discussion of germaneness, see *supra* note 304.

resolution.[313]

(6) Notwithstanding any other rule,[314] **an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes**

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[313] Compare the similar provisions for control and division of time on motions generally in paragraph (2), which provide for time for the minority leader under certain circumstances. *See supra* p. 137.

Despite the legislative language of this paragraph and paragraph (2), the Chair once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader. 128 CONG. REC. S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(5) (not to mention the parallel, less specific provisions of section 305(b)(2)) to reconciliation bills, section 305(b)(5) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

[314] The rule of section 305(b)(6) runs contrary to the general rule in the Senate that it is not in order to amend solely material that the Senate has already amended. For discussions of the general rule, see F. RIDDICK, SENATE PROCEDURE 25-27 (1981) (and precedents cited there); M. Gold, Senate Procedure and Practice: An Introductory Manual 33-34, 46-47 (Dec. 1983).

to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.[315]

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[315] *See also* 128 CONG. REC. S5,759 (1982); Senate Precedent PRL19820520-006 (May 5, 1982) (LEGIS, Rules database) (inquiry of Majority Leader Baker regarding amendment by Sen. Sasser to the First Concurrent Resolution on the Budget for fiscal year 1983).

The Parliamentarian's notes accompanying the precedent of May 5, 1982, explains that office's position:

> Section 305(b)(6) . . . protects amendments which would otherwise not be in order, namely those amending figures already amended or those amending the pending question at more than one place, if said amendments make or maintain mathematical consistency. Advice from this office has been given to the effect that to qualify for this exception, any increase or decrease in a budget function requires a commensurate increase or decrease in any one or combination of the following to make the amendment in order: Revenue totals, and the amounts by which revenues should be changed, budget authority totals, outlay totals, public debt totals, and the amounts by which the statutory limit on the public debt should be changed, the deficit for the fiscal year involved and interest on the public debt, and other budget functions. Reconciliation numbers need not be changed.

Senate Precedent PRL19820520-006 (May 5, 1982) (LEGIS, Rules database).

(continued...)

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE. --

(1) The conference report on any concurrent resolution on the budget shall be in order[316] in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the conference report on any concurrent resolution on the budget,[317] and all

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[315](...continued)
Note that section 305(e) creates a point of order against consideration of a budget resolution whose figures are not mathematically consistent. *See infra* pp. 162-163.

[316] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[317] When conferees have before them a complete substitute, they may add any matter to their report that is not "entirely irrelevant" to the subject matter contained in either the bill or (continued...)

amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith,[318] debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manger of the conference report.

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[317](...continued)
the substitute. 128 CONG. REC. S10,898-901 (1982); Senate Precedent PRL19820819-002 (Aug. 19, 1982) (LEGIS, Rules database) (point of order by Sen. East on the Tax Reconciliation Act of 1982; Chair sustained 68-27 on appeal).

[318] Section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Time Limits for Conference Reports on Concurrent Resolutions on the Budget," added the language "and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith" at this point to make clear that the 10-hour limit constitutes an overall cap on all debate. *See* Pub. L. No. 100-119, § 209, 101 Stat. 754, 787 (Sept. 29, 1987). Section 8003(d) of the Omnibus Budget Reconciliation Act of 1987 inserted the comma after "therewith" that section 209 had inadvertently omitted. Pub. L. No. 100-203, § 8003(d), 101 Stat. 1330, 1330-282 (Dec. 22, 1987).

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by,

the manager of the conference report and the minority leader or his designee. No amendment[319] that is not germane[320] to the provisions of such amendments shall be in received.[321]

(d) REQUIRED ACTION BY CONFERENCE COMMITTEE. -- If at the end of 7 days (excluding Saturdays, Sundays, and legal holidays) after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session --

(1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or

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[319] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[320] For a discussion of germaneness, see *supra* note 304.

[321] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

(2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution and inserts substitute text.

(e) CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE. -- It shall not be in order[322] in the Senate to vote on the question of agreeing to --

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent;[323] or

(2) a conference report on a concurrent report on a concurrent resolution on the

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[322] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[323] For a discussion of mathematical consistency, see *supra* note 315.

Note that section 305(b)(6) makes in order amendments that makes or maintains mathematical consistency. *See supra* pp. 156-157.

budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

SEC. 306.[324] No bill or resolution,[325] and no amendment[326] to any bill or resolution, dealing with any matter which is

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[324] Section 306 is codified as amended at 2 U.S.C. § 637.

Section 904(c) provides that the Senate may waive or suspend section 306 only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 290.

[325] Because section 306 does not contain the words "as reported" here, points of order under section 306 will apply to bills and resolutions as amended by amendments against which points of order would lie under section 306. *Cf. infra* note 431 (regarding the meaning of "as reported" in section 311(a)).

[326] *Cf. supra* note 257 (by virtue of its application to "amendments," section 303 also applies to conference reports).

An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

within the jurisdiction[327] of the Committee on the Budget of either House shall be considered[328] in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

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[327] For a discussion of the Budget Committee's jurisdiction, see the *Special Issue* discussion *infra* pp. 579-591.

[328] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

For examples of applications of the point of order under section 306, see, *e.g.*, 133 CONG. REC. S11,025 (July 31, 1987) (Conrad motion to waive rejected 36-53 regarding his amendment no. 651 to H.J. Res. 324, Increase in the Public Debt Limit); 133 CONG. REC. S10,584 (July 23, 1987) (Domenici motion to waive rejected 47-49 regarding his amendment no. 631 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 133 CONG. REC. S10,579 (July 23, 1987) (Chiles motion to waive approved 71-25 regarding his modified amendment no. 626 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 129 CONG. REC. S3,587-603 (1983); Senate Precedent PRL19830322-002 (Mar. 22, 1983) (LEGIS, Rules database) (Heinz motion to waive rejected 56-41 regarding his amendment to remove Social Security trust funds from the unified budget).

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COMPLETED BY JUNE 10

SEC. 307.[329] On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills[330] providing new budget authority[331] under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

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[329] Section 307 is codified as amended at 2 U.S.C. § 638.

[330] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[331] Section 3(2) defines "budget authority." *See supra* p. 10-11.

REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

SEC. 308.[332] (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, OR NEW CREDIT AUTHORITY, OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES. --

(1) Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority[333] (other than continuing appropriations), new spending authority described in section 401(c)(2),[334] or new credit authority,[335] or providing an

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[332] Section 308 is codified as amended at 2 U.S.C. § 639.

[333] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[334] *See infra* pp. 216-221.

[335] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

increase or decrease in revenues or tax expenditures[336] for a fiscal year, the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office --

(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 302(b)[337] for the most recently agreed to concurrent resolution on the budget for such fiscal year;

(B) including an identification of any new spending authority described in section 401(c)(2)[338] which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;

(C) containing a projection by the

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[336] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[337] *See supra* pp. 96-97.

[338] *See infra* pp. 216-221.

Congressional Budget Office of how such measure will affect the levels of such budget authority,[339] budget outlays,[340] spending authority,[341] revenues, tax expenditures,[342] direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

(D) containing an estimate by the Congressional Budget Office of the level of new budget authority[343] for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

(2) Whenever a conference report is filed in either House and such conference report or

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[339] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[340] Section 3(1) defines "budget outlays." *See supra* p. 10.

[341] Section 401(c)(2) defines "spending authority." *See infra* pp. 216-221.

[342] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[343] Section 3(2) defines "budget authority." *See supra* p. 10-11.

any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or resolution provides new budget authority[344] (other than continuing appropriations), new spending authority described in section 401(c)(2),[345] or new credit authority,[346] or provides an increase or decrease in revenues for a fiscal year, the statement of managers accompanying such conference report shall contain the information described in paragraph (1),[347] if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION. --

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[344] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[345] *See infra* pp. 216-221.

[346] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

[347] *See supra* pp. 167-169.

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly basis detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority,[348] new spending authority described in section 401(c)(2),[349] or new credit authority,[350] or providing an increase or decrease in revenues or tax expenditures[351] for a fiscal year. Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays[352]) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding such fiscal

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[348] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[349] *See infra* pp. 216-221.

[350] Section 402(b) defines "*new* credit authority" (*see infra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 24).

[351] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[352] Section 3(1) defines "outlays." *See supra* p. 10.

year.

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports. Such reports --

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

(B) shall include, but are not limited to, summaries of tabulations provided under subsection (b)(1);[353] and

(C) shall be based on information provided under subsection (b)(1)[354] without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUD-

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[353] *See supra* pp. 171-172.

[354] *See supra* pp. 171-172.

GET ACTION. -- **As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year --**

(1) total new budget authority[355] and total budget outlays[356] for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit,[357] if any, for each fiscal year in such period;

(3) tax expenditures[358] for each fiscal year in such period;

(4) entitlement authority[359] for each fiscal year in such period; and

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[355] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[356] Section 3(1) defines "budget outlays." *See supra* p. 10.

[357] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[358] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[359] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

(5) credit authority[360] for each fiscal year in such period.

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[360] Section 3(10) defines "credit authority." *See supra* p. 24.

HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS[361]

SEC. 309.[362] It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills[363] providing new budget authority[364] under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

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[361] Compare the parallel point of order in the House in connection with completion of reconciliation in section 310(f)(2). *See infra* p. 194.

[362] Section 309 is codified as amended at 2 U.S.C. § 640.

[363] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[364] Section 3(2) defines "budget authority." *See supra* p. 10-11.

RECONCILIATION

SEC. 310.[365] (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.[366] -- **A concurrent resolution on the budget**

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[365] Section 310 is codified as amended at 2 U.S.C. § 641.

[366] Section 201(b) of Gramm-Rudman-Hollings (*see infra* p. 342) revised subsections 310(a) and 310(b) to read as they do now. Those subsections originally addressed reconciliation in the context of a second budget resolution. As enacted in 1974, sections 310(a) and 310(b) read:

> ## SECOND REQUIRED CONCURRENT RESOLUTION AND RECONCILIATION PROCESS
>
> SEC. **310**. (a) REPORTING OF CONCURRENT RESOLUTION. -- The Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which reaffirms or revises the concurrent resolution on the budget most recently agreed to with respect to the fiscal year beginning on October 1 of such year. Any such concurrent resolution on the budget shall also, to the extent necessary --
>
> (1) specify the total amount by which --
>
> (A) new budget authority for such fiscal year;

(continued...)

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[366](...continued)

(B) budget authority initially provided for prior fiscal years; and

(C) new spending authority described in section 401(c)(2)(C) which is to become effective during such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

Any such concurrent resolution may be reported, and the report accompanying it may be filed, in either House notwithstanding that that House is not in session on the day on which such concurrent resolution is reported.

(b) Completion of Action on Concurrent Res-

(continued...)

for any fiscal year,[367] to the extent necessary to

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[366](...continued)
OLUTION. -- Not later than September 15 of each year, the Congress shall complete action on the concurrent resolution on the budget referred to in subsection (a).

[367] No limitations apply to how many years may be covered by reconciliation instructions. 127 CONG. REC. S2,754 (1981); Senate Precedent PRL19810326-001 (Mar. 26, 1981) (LEGIS, Rules database). On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Hatfield posed a series of parliamentary inquiries of the Chair (Senator Humphrey of New Hampshire):

> Mr. HATFIELD. Mr. President, if this present Budget Committee had desired to apply program reductions beyond the year 1983, and set target figures on those subsequent fiscal years -- and let me cite a hypothetical situation, that they would want to set, say, program reductions, target figures, for 1984, 1985, 1986, 1987, 1988, 1989, 1990, up to the year 2000, would that have been within the power of the Budget Committee as interpreted by the Chair under the Budget Act?
>
> The PRESIDING OFFICER. The issue is out-year reconciliations and on that issue the Budget Act itself is silent. The Senate chose to permit out-year budget reconciliation in a previous year. Therefore, the Chair would not be advised that a point of order would lie against out-year reconciliation instructions.
>
> Mr. ROBERT C. BYRD addressed the Chair.
>
> The PRESIDING OFFICER. The Chair had

(continued...)

effectuate the provisions and requirements of such resolution, shall --

(1) specify the total amount by which --

(A) new budget authority[368] for such fiscal year;

(B) budget authority[369] initially provided for prior fiscal years;

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[367] (...continued)
not quite finished -- no matter what the year was. The Senator from Oregon has the floor.

Mr. HATFIELD. Do I understand that the Chair -- I would be glad to yield to the minority leader, but I have to get this clear in my mind. I think I am in frequency with the Chair, I am not sure, but do I understand the Chair states there are no out-year limitations that would apply to a resolution of this kind, which is a subsequent resolution to the first concurrent resolution?

The PRESIDING OFFICER. Not in the Budget Act.

Id.

[368] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[369] Section 3(2) defines "budget authority." *See supra* p. 10-11.

(C) new entitlement authority[370] which is to become effective during such fiscal year; and

(D) credit authority[371] for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction[372] to deter-

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[370] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

[371] Section 3(10) defines "credit authority." *See supra* p. 24.

[372] Rule XXV of the Standing Rules of the Senate provides (in relevant part):

> (i) **Committee on Finance,** to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
>
> . . . .

mine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amounts by which the statutory limit on the public debt[373] is to be changed and direct the committee having jurisdiction[374] to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1),[375]

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[372](...continued)

> 8. Revenue measures generally, except as provided in the Congressional Budget Act of 1974.

Standing Rules of the Senate Rule XXV(i)(8) (June 1, 1988).

[373] The public debt limit is set at 31 U.S.C. § 3101.

[374] Rule XXV of the Standing Rules of the Senate provides (in relevant part):

> (i) **Committee on Finance,** to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
>
> 1. Bonded debt of the United States, except as provided in the Congressional Budget Act of 1974.

Standing Rules of the Senate Rule XXV(i)(1) (June 1, 1988).

[375] *See supra* pp. 179-180.

(2),[376] and (3).[377]

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[376] *See supra* pp. 180-181.

[377] The Chair will not look to the effect of reconciliation instructions, only to their form. *See supra* note 131.

Reconciliation instructions may not specify that the reporting committee must achieve its savings from certain types of programs or raise its revenues in specific ways. 128 CONG. REC. S5,506 (1982); Senate Precedent PRL19820519-002 (May 5, 1982) (LEGIS, Rules database) (inquiries of Sen. Dole); 131 CONG. REC. S5,863 (1985); Senate Precedent PRL19850509-007 (May 9, 1985) (LEGIS, Rules database) (inquiry of Sen. Helms regarding amendment by Sen. Bradley).

Nonetheless, pursuant to this paragraph and section 301(b)(4) (the "elastic clause," *see supra* p. 70), budget resolutions have regularly instructed committees to achieve savings in categories not specifically enumerated in the listing in section 310(a). For example, budget resolutions regularly specify the amount by which reporting committees must reduce "outlays." Similarly, budget resolutions regularly distinguish between spending as defined in section 401(c)(2)(C) and other spending. In several instances, as well, the Senate has passed budget resolutions that have included reconciliation instructions that specify increases in "contributions." *See* S. Con. Res. 30, 101st Cong., 1st Sess., §§ 6(b), 6(c), 6(j) & 6(k) (1989) (instructions to the Senate Committee on Agriculture, Nutrition, and Forestry, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on Agriculture, and the House Committee on Banking, Finance, and Urban Affairs); S. Con. Res. 48, 100th Cong., 1st Sess., §§ 4(b) & 4(l) (1987) (instructions to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture); S. Con. Res. 120, 99th Cong., 2d Sess., §§ 2(f) & 2(q) (1986) (instructions to the Senate Committee on Energy and Natural Resour-

(continued...)

(b) Legislative Procedure. -- If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a),[378] and --

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit such recommendations to the Committee on the Budget of its House, which, upon receiving all such recommendations, shall report to its House reconciliation legislation

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[377](...continued)
ces and the House Committee on Energy and Commerce); S. Con. Res. 32, 99th Cong., 1st Sess., §§ 2(j) & 2(x) (1985) (instructions to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service).

[378] *See supra* pp. 176-182.

carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.

(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.[379] -- Any committee of the House of Repre-

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[379] If a committee fails to comply with the reconciliation instructions in the budget resolution, it is in order for any Senator to offer a motion to recommit the reconciliation bill with instructions to report back forthwith with an amendment -- which need not be germane -- that achieves those savings. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); *see also* SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1981, S. REP. No. 97-139, 97th Cong., 1st Sess. 11 (1981); SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1982, S. REP. No. 97-504, 97th Cong., 2d Sess. 6 (1982); SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1983, S. REP. No. 98-300, 98th Cong., 1st Sess. 5 (1983); SENATE COMM. ON THE BUDGET, CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985, S. REP. No. 99-146, 99th Cong., 1st Sess. 5 (1985); SENATE COMM. ON THE BUDGET, SIXTH OMNIBUS BUDGET RECONCILIATION ACT, 1986, S. REP. No. 99-348, 99th Cong., 2d Sess. 5 (1986). Thus, failure to comply causes the offending committee to lose the protection of the requirement of section 305(b)(2) (*see supra* p. 139 & note 304.) that amendments be germane and may mean that another Senator will write the offending committee's pro-

(continued...)

sentatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1)[380] and (2)[381] of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions --

(1) if --

(A) the amount of the changes of the type described in paragraph (1)[382] of such subsection recommended by such committee do no exceed or fall below the amount of the changes such committee

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[379] (...continued)
visions on the floor. For the parallel enforcement mechanism in the House, see section 310(d)(5) *infra* p. 191.

As long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill may contain non-budgetary amendments to substantive law, and still be protected under the Congressional Budget Act. 127 CONG. REC. S6,664 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database) (statement of Majority Leader Baker).

[380] That is, budget, entitlement, and credit authority. *See supra* pp. 179-180.

[381] That is, revenues. *See supra* pp. 180-181.

[382] That is, budget, entitlement, and credit authority. *See supra* pp. 179-180.

was directed by such concurrent resolution to recommend under such paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1)[383] and (2)[384] of such subsection, and

(B) the amount of the changes of the type described in paragraph (2)[385] of such subsection recommended by such committee do no exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1)[386] and (2)[387] of such subsection, and

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[383] That is, budget, entitlement, and credit authority. *See supra* pp. 179-180.

[384] That is, revenues. *See supra* pp. 180-181.

[385] That is, revenues. *See supra* pp. 180-181.

[386] That is, budget, entitlement, and credit authority. *See supra* pp. 179-180.

[387] That is, revenues. *See supra* pp. 180-181.

(2) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1)[388] and (2)[389] of such subsection.[390]

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[388] That is, budget, entitlement, and credit authority. *See supra* pp. 179-180.

[389] That is, revenues. *See supra* pp. 180-181.

[390] Because to some extent this section makes outlays and revenues fungible, some refer to it as the "fungibility rule."

For an example of the rule in operation, take the case of a budget resolution that instructs a committee to achieve $3 million in outlay reductions and $7 million in revenue increases, for a total of $10 million in deficit reduction. By virtue of this section, that committee may permissibly achieve outlay reductions as low as $1 million ($3 million minus 20 percent of $10 million, or $2 million), as long as it achieves a total of at least $10 million in deficit reduction by also achieving at least $9 million in revenues increases. Alternatively, the committee may achieve revenue increases as low as $5 million ($7 million minus 20 percent of $10 million, or $2 million), as long as it achieves a total of at least $10 million in deficit reduction by also achieving outlay reductions of at least $5 million.

(d) LIMITATION OF AMENDMENTS TO RECONCILIATION BILLS AND RESOLUTIONS.[391] --

(1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution[392] if such amendment would have the effect of increasing any specific budget outlays[393] above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or

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[391] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 310(d) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See infra* p. 566.

[392] Section 310(b) defines "reconciliation resolution." *See supra* pp. 183-184.

[393] Section 3(1) defines "budget outlays." *See supra* p. 10.

an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority[394] or new entitlement authority[395] may be in order.

(2) It shall not be in order[396] in the Senate to consider any amendment[397] to a reconciliation bill or reconciliation resolution[398] if such amendment would have the effect of decreasing any specific budget outlay[399] reductions below the level of such outlay reductions provided

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[394] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[395] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

[396] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[397] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[398] Section 310(b) defines "reconciliation resolution." *See supra* pp. 183-184.

[399] Section 3(1) defines "budget outlays." *See supra* p. 10.

(for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent[400] to any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.

(3) Paragraphs (1)[401] and (2)[402] shall not apply if a declaration of war by the Congress[403] is in effect.

(4) For purposes of this section, the

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[400] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

[401] *See supra* pp. 188-189.

[402] *See supra* pp. 189-190.

[403] The Constitution grants Congress the power "[t]o declare War." U.S. CONST. art. I, sec. 8, cl. 11.

levels of budget outlays[404] and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[405] of the House of Representatives or of the Senate, as the case may be.

(5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.[406]

(e) PROCEDURE IN THE SENATE. --

(1) Except as provided in paragraph (2),[407] the provisions of section 305[408] for the

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[404] Section 3(1) defines "budget outlays." *See supra* p. 10.

[405] This section reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 301(i)(2)(C), *supra* p. 92; section 302(g), *supra* p. 105; section 311(c), *infra* p. 210; and section 273 of Gramm-Rudman-Hollings, *infra* p. 556.

[406] Compare the parallel sanctions for noncompliance in the Senate. *See supra* note 184.

[407] *See infra* p. 192.

[408] *See supra* pp. 131-163.

consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b)[409] and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill reported under subsection (b),[410] and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.[411]

(f) Completion of Reconciliation Process. --

(1) In General. -- Congress shall complete action on any reconciliation bill or reconciliation resolution[412] reported under

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[409] *See supra* pp. 183-184.

[410] *See supra* pp. 183-184.

[411] In contrast, section 305(b)(1) limits debate on a concurrent resolution on the budget to 50 hours and debate on revisions of a budget resolution to 15 hours. *See supra* pp. 135-136.

[412] Section 310(b) defines "reconciliation resolution." *See supra* pp. 183-184.

subsection (b)[413] not later than June 15 of each year.[414]

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[413] *See supra* pp. 183-184.

[414] Congress usually takes action on reconciliation bills well after the June 15 deadline:

Adoption Dates of Reconciliation Bills

Reconciliation bills	Dates passed by Congress
Omnibus Reconciliation Act of 1980	December 3, 1980 (Pub. L. No. 96-499)
Omnibus Budget Reconciliation Act of 1981	July 31, 1981 (Pub. L. No. 97-35)
Omnibus Budget Reconciliation Act of 1982	August 18, 1982 (Pub. L. No. 97-253)
Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)	August 19, 1982 (Pub. L. No. 97-248)
Omnibus Budget Reconciliation Act of *1983*	April 5, *1984* (Pub. L. No. 98-270)
Consolidated Omnibus Budget Reconciliation Act of *1985* (COBRA)	April 7, *1986* (Pub. L. No. 99-272)
Omnibus Budget Reconciliation Act of 1986	October 21, 1986 (Pub. L. No. 99-509)
Omnibus Budget Reconciliation Act of 1987	December 22, 1987 (Pub. L. No. 100-203)
Omnibus Budget Reconciliation Act of 1989	November 22, 1989 (Pub. L. No. 101-239)

(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.[415] -- It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

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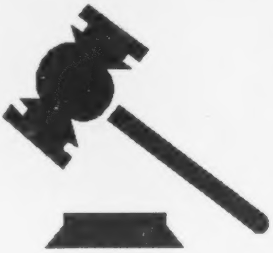
[415] Compare the parallel point of order in the House in connection with completion of all appropriations legislation in section 309. *See supra* p. 175.

(g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.[416] -- Notwithstanding any other provision of law, it shall not be in order[417] in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution[418] reported[419] pursuant to a concurrent resolution on the budget agreed to under section 301[420] or 304,[421] or a resolution pursuant



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[416] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 310(g) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See infra* p. 566.

[417] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[418] Section 310(o) defines "reconciliation resolution." *See supra* pp. 183-184.

[419] Because section 310(g) does not contain the words "*as* reported" here, points of order under section 310(g) will apply to reconciliation bills and reconciliation resolutions as amended by amendments against which points of order would lie under section 310(g). *Cf. infra* note 431 (regarding the meaning of "as reported" in section 311(a)).

[420] *See supra* pp. 59-93.

to section 254(b)[422] of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto[423] or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II[424] of the Social Security Act.

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[421] (...continued)

[421] *See supra* pp. 128-130.

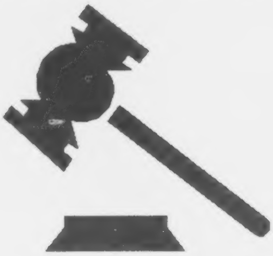
[422] *See infra* pp. 459-468.

[423] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[424] Title II of the Social Security Act is codified as amended at 42 U.S.C. §§ 401-433.

NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

SEC. 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER.[425] -- Except as provided by subsection (b),[426] after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order[427] in either the House of Representatives or the Senate to consider any bill,



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[425] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 311(a) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See infra* p. 566.

[426] Section 311(b) applies what is known as the "Fazio exception," which applies only in the House. *See infra* pp. 208-209.

[427] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

resolution, or amendment[428] providing new budget authority[429] for such fiscal year, providing new entitlement authority[430] effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if --

(1) the enactment of such bill or resolution as reported;[431]

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[428] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[429] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[430] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 483.

[431] By virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor. 131 Cong. Rec. S8,806 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee). In other words, no point of order will lie under section 311 even though the bill as amended would cause revenues to fall below the revenue floor, if the bill as reported would not have done so. *See id.* This precedent creates a limited window of applicability for section (continued...)

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[431](...continued)
311(a): A Senator must raise a point of order against an amendment during the pendency of the amendment, or forever lose the right to question under section 311(a) the deficit-increasing effect of the bill as amended. Note the following series of inquiries by Senator Chafee of the Chair (Senator Humphrey of New Hampshire):

> The PRESIDING OFFICER. This amendment reduces revenues below the level expressed in the second budget resolution, and therefore the point of order is well taken.
>
> Mr. CHAFEE. I ask the Chair if the entire bill before us does not do the same. We just adopted an amendment of the Senator from Pennsylvania that reduced revenues by $25 million. Will the Chair offer his opinion on that situation?
>
> The PRESIDING OFFICER. The bill as reported is revenue neutral for the fiscal year 1985. Therefore, it is not subject to a point of order.
>
> Mr. CHAFEE. Would the President be good enough to explain? We just adopted on the floor an amendment by a voice vote that cost $25 million. Is that de minimis or does that not count? Is that not real dollars?
>
> The PRESIDING OFFICER. That amendment likewise would have been subject to a point of order, but the amendment having been agreed to, the point of order is now moot.
>
> Mr. CHAFEE. But the amendment is now part of the bill. So is the whole bill not subject to a point

(continued...)

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[431](...continued)
of order?

The PRESIDING OFFICER. The Parliamentarian advises the bill is treated on the basis on which it was reported from committee.

Mr. CHAFEE. That is parliamentary jargon that I do not quite understand.

Mr. PACKWOOD. Mr. President, I ask what the Chair is ruling: Is it that first we look at the bill as introduced and since the bill is revenue neutral, it is not subject to a point of order? Each amendment as it comes along may or may not be subject to a point of order, but you do not impute it backward to the bill when it is added. Do I understand the ruling correctly?

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. That is a bit of ingenuity that I am afraid I have not mastered. Let us take that slowly. You can add innumerable amendments to the bill that cost millions or billions, and if a point of order is not raised to each amendment at the time and is adopted, the whole measure itself, which now involves these billions above any budget limitations that were there, is perfectly all right? Could the Chair lead me through that Alice in Wonderland safely?

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. That is the way it works?

(continued...)

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[431](...continued)

> The PRESIDING OFFICER. That is what the law says.
>
> Mr. CHAFEE. So the law says you do not pay any attention to the final product.
>
> The PRESIDING OFFICER. The Senator's analysis is correct.
>
> Mr. CHAFEE. Is that what the law says, Mr. President?
>
> The PRESIDING OFFICER. The Chair will read the provision. "The enactment of such bill or resolution as reported." The Chair advises that with respect to points of order in this wise the bill is not affected by amendments.
>
> Mr. CHAFEE. If that is the law I refer the President to Charles Dickens' definition of the law.

Id. (Sen. Chafee refers, respectively, to L. CARROLL (C. DODGSON), ALICE'S ADVENTURES IN WONDERLAND (1865), and to Mr. Bumble's definition in C. DICKENS, OLIVER TWIST ch. 51 (1838).)

Compare the language of section 303(a), *supra* p. 107; section 401(a), *infra* p. 211; section 402(a), *infra* p. 232; and Gramm-Rudman-Hollings section 254(b)(1)(E)(i), *infra* p. 463; which contain the magic words "as reported."

Contrast the language of section 301(i)(1)(A), *supra* p. 88; section 302(c), *supra* p. 97; section 302(f)(2), *supra* p. 102; section 304(b), *supra* p. 128; section 306, *supra* p. 164; section

(continued...)

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[431](...continued)
310(g), *supra* p. 195; and section 401(b)(1), *infra* p. 213; which *do not* contain the magic words "as reported." Under the logic of this precedent, points of order under section 302(f), for example, *will* apply to bills as amended by amendments against which points of order would lie under section 302(f).

In contrast to the ruling of the Chair, the clause of section 311 listing

> (1) the enactment of such bill or resolution as reported;
>
> (2) the adoption and enactment of such amendment; or
>
> (3) the enactment of such bill or resolution in the form recommended in such conference report

appears merely to state the Congress's attempt to cover the complete legislative process at all stages on the floor.

The legislative history of section 311 supports the interpretation that points of order apply to bills as amended by amendments that offend the rule. The report of the Senate Committee on Rules and Administration on the Congressional Budget Act makes clear that the drafters of section 311 wanted the point of order to cover bills as reported and *as amended*:

> *Sec. 311.*
>
> After all regular annual bills and resolutions providing new budget authority for a fiscal year have been enacted and, if a reconciliation bill is required to be reported under Section 310(c) such a bill has been enacted, it shall not be in order in either House to

(continued...)

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[431](...continued)

> consider *any bill or resolution* providing additional new budget authority for such fiscal year, any amendment to any such bill or resolution or any conference report thereon if the enactment of the bill or resolution *as reported, as amended or as recommended in the conference report* would cause the appropriate levels of new budget authority or total outlays, as set forth in the budget resolution then in effect, to be exceeded.
>
> In recent years supplemental and, to a lesser extent, deficiency appropriations have been of such magnitude as to have serious impact on the Federal spending picture. In addition, the spending needs being met with supplemental appropriations are most often unanticipated at the time the regular appropriations are being considered and enacted. For these reasons it is considered necessary to require that *any measure* providing new budget authority for a fiscal year *after* the budget process for such year has been completed shall be within the appropriate levels set forth in the then-effective budget resolution.

S. Rep. No. 93-688, 93d Cong., 2d Sess. 53-54 (1973) (some emphasis added).

The report of the Senate Committee on Government Operations for the Budget Act used the broad term *any measure*:

> Once the budget process for a fiscal year has been completed and appropriations have been effected by a triggering provision described, it shall not be in order to consider *any measure* providing new budget authority for such fiscal year or any conference report thereon if the result of such a measure would be to

(continued...)

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[431](...continued)

> cause the limitations on new budget authority or on total outlays then in effect to be exceeded.
>
> In recent years supplemental and, to a lesser extent, deficiency appropriations have been of such magnitude as to have serious impact on the Federal spending picture. In addition, the spending needs being met with supplemental appropriations are most often unanticipated at the time the regular appropriations are being considered and enacted. For these reasons the Committee believes it necessary to require that *any measure* providing new budget authority for a fiscal year *after* the budget process for such year has been completed shall be within the limitations set forth in the then-effective budget resolution.

S. Rep. No. 93-579, 93d Cong., 1st Sess. 55 (1973) (some emphasis added).

The conference report for the Budget Act spoke in the general terms *legislation* and *measures*:

> The Senate amendment provided that after adoption of all regular appropriations and a required reconciliation bill, Congress could not consider budget authority *legislation* in excess of the appropriate levels in the most recent concurrent resolution.
>
> The conference substitute provides that after adoption of the second concurrent resolution and completion of the reconciliation process, it shall not be in order to consider any new budget authority or entitlement *measure* that would cause the appropriate level of total budget authority or outlays in the most recent budget concurrent resolution to be exceeded. Nor

(continued...)

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[431](...continued)

> would it be in order to consider a *measure* that would reduce total revenues below the appropriate levels in the budget resolution.

S. Conf. Rep. No. 93-924, 93d Cong., 2d Sess. 64 (1974) (emphasis added).

Similarly, the conference report for Gramm-Rudman-Hollings, which added the language of the maximum deficit amount point of order (*see infra* note 207), spoke of a point of order that covered *legislation*, using that general term:

> *(a) Legislation Subject to Point of Order.* -- This subsection prohibits consideration in the House or the Senate of *legislation* providing budget authority or entitlement authority, or reducing revenues for the fiscal year to which the most recently agreed to budget resolution applies if enactment of such *legislation* would cause the totals for such authorities, or for revenues, or the total for budget outlays set forth in such budget resolution to be breached. A point of order also lies in the Senate against *legislation* that would cause the maximum deficit amount to be exceeded.

H.R. Conf. Rep. No. 99-433, 99th Cong., 2d Sess. 110 (1985) (some emphasis added).

Thus the legislative history contemplates a point of order against any legislation or measure that offends the rule. No provision seems to have been made requiring the point of order to lie only at certain points along the way.

Note also that the Chair's interpretation of the words "as reported" results in another anomaly. Even though the precedent causes a point of order not to lie against a bill amended

(continued...)

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate level of total budget authority[432] or total budget outlays[433] set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues[434] to be less

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[431](...continued) by an amendment that offends section 311, the terms of section 311 apply to conference reports. Consequently, a point of order would lie against a conference report that contained nothing in substance other than an amended bill that would not be subject to a point of order.

[432] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[433] Section 3(1) defines "budget outlays." *See supra* p. 10.

[434] *E.g.*, 131 Cong. Rec. S8,806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (point of order raised by Sen. Packwood).

If the current level is below the revenue floor for a fiscal year, legislation that would result in a loss of revenues for that year would violate section 311. 131 Cong. Rec. S6,367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum).

than the appropriate level[435] of total revenues set forth in such concurrent resolution or,[436] in the Senate, would otherwise result in a deficit[437] for such fiscal year that --

(A) for fiscal year 1989 or any subsequent fiscal year, exceeds the maximum deficit amount specified for such fiscal year in section 3(7);[438] and

(B) for fiscal year 1988 or 1989, exceeds the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in

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[435] The Congressional Budget Act makes no exception for very small amounts; even a "negligible" revenue loss can subject legislation to a point of order under section 311(a). 122 Cong. Rec. S17,709-10 (1976); Senate Precedent PRL19761001-001 (Oct. 1, 1976) (LEGIS, Rules database) (point of order by Sen. Haskell).

[436] Some refer to the language of section 311(a) from this word "or" through the end of subparagraph (B) as the "maximum deficit amount point of order." Section 201(b) of Gramm-Rudman-Hollings added what survives in substance as subparagraph (A). *See infra* p. 342. Section 106(e) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 revised this language to add, among other things, subparagraph (B). Pub. L. No. 100-119, § 106(e), 101 Stat. 754, 781 (Sept. 29, 1987).

[437] Section 3(6) defines "deficit." *See supra* pp. 13-20.

[438] *See supra* pp. 20-22.

> **which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6)[439] of the Balanced Budget and Emergency Deficit Control Act of 1985 minus $23,000,000,000 for fiscal year 1988 or $36,000,000,000 for fiscal year 1989;**

except to the extent that paragraph (1)[440] of section 301(i) or section 304(b),[441] as the case may be, does not apply by reason of paragraph (2)[442] of such subsection.

(b) EXCEPTION IN THE HOUSE OF REPRESENTATIVES. -- Subsection (a)[443] shall not apply in the House of Representatives to any bill, resolution, or amendment which provides new budget author-

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[439] *See infra* pp. 391-400.

[440] *See supra* pp. 88-91.

[441] *See supra* pp. 128-130.

[442] That is, section 301(i)(2), regarding war. *See supra* pp. 91-93.

Note also the provisions for the suspension of section 311(a) under certain circumstances after declaration of a recession pursuant to section 254(a) of Gramm-Rudman-Hollings. *See infra* pp. 449-458.

[443] *See supra* pp. 197-208.

ity[444] or new entitlement authority[445] effective during such fiscal year, or to any conference report on any such bill or resolution, if --

(1) the enactment of such bill or resolution as reported;

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not cause the appropriate allocation of new discretionary budget authority[446] or new entitlement authority made pursuant to section 302(a)[447] for such fiscal year, for the committee within whose jurisdiction such bill, resolution, or amendment falls, to be exceeded.

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[444] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[445] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

[446] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[447] *See supra* pp. 94-95.

(c) DETERMINATION OF BUDGET LEVELS. -- For purposes of this section, the levels of new budget authority,[448] budget outlays,[449] new entitlement authority,[450] and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[451] of the House of Representatives or of the Senate, as the case may be.

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[448] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[449] Section 3(1) defines "budget outlays." *See supra* p. 10.

[450] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218).

[451] This section reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 301(i)(2)(C), *supra* p. 92; section 302(g), *supra* p. 105; section 310(d)(4), *supra* p. 190; and section 273 of Gramm-Rudman-Hollings, *infra* p. 556.

TITLE IV

ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

BILLS PROVIDING NEW SPENDING AUTHORITY

SEC. 401.[452] (a) CONTROLS ON LEGISLATION PROVIDING SPENDING AUTHORITY.[453] -- **It shall not be in order[454] in either the House of Representatives or the Senate to consider any bill, resolution, or conference report, as reported[455] to its House**

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[452] Section 401 is codified as amended at 2 U.S.C. § 651.

[453] Note that section 401(d) provides significant exceptions to these controls. *See infra* pp. 221-228.

[454] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[455] *Cf. supra* note 431 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

which provides new spending authority[456] described in subsection (c)(2) (A)[457] or (B)[458] (or any amendment which provides such new spending authority),[459] unless that bill, resolution, conference report, or amendment also provides that such new spending authority as described in subsection (c)(2) (A)[460] or (B)[461] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.[462]

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[456] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 435 (regarding section 311(a)).

[457] *See infra* p. 217.

[458] *See infra* p. 217.

[459] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[460] *See infra* p. 217.

[461] *See infra* p. 217.

[462] *See, e.g.*, 132 CONG. REC. S10,693 (Aug. 7, 1986) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 401(a)).

On whether something is "provided in appropriation Acts," see generally *infra* note 483.

Section 3(5) defines "appropriation Act" by reference to 1

(continued...)

(b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.[463] --

(1) It shall not be in order[464] in either the House of Representatives or the Senate to consider any bill or resolution[465] which provides new

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[462](...continued) U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[463] Section 3(9) (*see supra* p. 23) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 218). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 483.

Note that section 401(d) provides significant exceptions to this subsection. *See infra* pp. 221-228.

[464] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[465] Because section 401(b)(1) does not contain the words "as reported" here, points of order under section 401(b)(1) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 401(b)(1). *Cf. supra* note 431 (regarding the meaning of "as reported" in section 311(a)).

spending authority[466] described in subsection (c)(2)(C)[467] (or any amendment[468] which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection (c)(2)(C)[469] which is to become effective during a fiscal year and the amount of new budget author-

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[466] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 435 (regarding section 311(a)).

[467] *See infra* pp. 218-220. Section 3(9) refers to section 401(c)(2)(C) to define the term "entitlement authority." *See supra* p. 23.

[468] *Cf. supra* note 257 (by virtue of its application to "amendments," section 303 also applies to conference reports).

An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[469] *See infra* pp. 218-220. Section 3(9) refers to section 401(c)(2)(C) to define the term "entitlement authority." *See supra* p. 23.

ity[470] which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b)[471] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under

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[470] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[471] *See supra* pp. 96-97.

paragraph (2)[472] with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

(c) DEFINITIONS. --

(1) For purposes of this section, the term "new spending authority" means spending authority not provided by law on the effective date of this Act,[473] including any increase in or addition to spending authority provided by law on such date.

(2) For purposes of paragraph (1), the term "spending authority" means[474] authority

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[472] *See supra* pp. 214-215.

[473] Section 211 of Gramm-Rudman-Hollings changed this word from "section" to "Act." *See infra* p. 343. As originally written, the reference was clear: section 905(c) indicates that the effective date for section 401 was January 19, 1976. *See infra* pp. 293-294 & note 605. As amended, however, the intent is ambiguous. Section 905(a) provides that the effective date of the Act was the date of enactment, July 12, 1974, except as provided in section 905, which has the specific reference to (among other sections) section 401. *See infra* p. 293. Note that the drafters of Gramm-Rudman-Hollings made clear when they meant the date of enactment of Gramm-Rudman-Hollings instead of the date of enactment of the Congressional Budget Act. *See* section 401(d)(3)(A)(ii) *infra* p. 226.

[474] Note that section 257(11) of Gramm-Rudman-Hollings

(continued...)

(whether temporary or permanent) --

> **(A) to enter into contracts under which the United States is obligated to make outlays,[475] the budget authority[476] for which is not provided in advance by appropriation Acts;[477]**
>
> **(B) to incur indebtedness (other than indebtedness incurred under chapter 31[478] of title 31 of the United States Code) for the repayment of which the United States is liable, the budget**

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[474](...continued) defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525. Note also that section 406(a), regarding off-budget agencies, programs, and activities (*see infra* pp. 243-244), also requires that certain items shall be included in spending authority.

[475] Section 3(1) defines "outlays." *See supra* p. 10.

[476] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[477] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 483.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[478] Chapter 31 comprises 31 U.S.C. §§ 3101-3129.

authority[479] for which is not provided in advance by appropriation Acts;[480]

(C)[481] to make payments (including loans and grants), the budget authority[482] for which is not provided for in advance by appropriations Acts,[483] to any person

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[479] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[480] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 483.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[481] Section 3(9) refers to this subparagraph to define the term "entitlement authority." *See supra* p. 23.

[482] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[483] Even if an amendment creates benefits for qualifying individuals, it will not create entitlement authority within the meaning of section 401(c)(2)(C) if it also provides that "no payments shall be made except subject to appropriations." 130 CONG. REC. S7,070-71, S7,108, S7,110 (1984) (parliamentary inquiry of Sen. Cohen); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). This is so even if the language creating the benefits says "an individual shall be entitled." *Id.*

The Parliamentarian's office has advised that the following language would ensure that a program would be subject to (continued...)

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[483](...continued)
appropriations, and therefore not an entitlement under section 401(c)(2)(C):

> In any fiscal year the administrator of this program shall limit the value of any benefits conferred by this program to an amount not in excess of the appropriation for such fiscal year and if the requirements of this program exceed the limitations set herein the benefits shall be reduced to the extent necessary to comply with the provisions of this subsection.

Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database).

To avoid a point of order caused by the creation of new entitlement authority, however, it is not necessarily sufficient to include language that the payments must come out of an appropriated account; the language must make the payments themselves subject to appropriations. *See* 130 CONG. REC. S7,107, S7,109-10 (June 13, 1984) (parliamentary inquiry and statement of Sen. Domenici). Some thus refer to "appropriated entitlements" that fall within the meaning of section 401(c)(2)(C). Even though the Government pays such appropriated entitlements out of appropriated funds, annual appropriations do not truly control them. That the entitlement is paid from appropriated funds cannot, without more, remove the entitlement from the definition of section 401(c)(2)(C), for, as the Constitution requires, "No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law." U.S. CONST. art. I, sec. 9, cl. 7. Thus, all entitlements provide for appropriations, either implicitly or explicitly.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. The text of 1 U.S.C. § 105 (*see supra* note 25) deals with regular appropriations bills. Section
(continued...)

or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

(D) to forgo the collection by the United States of proprietary offsetting receipts, the budget authority[484] for which is not provided in advance by appropriation Acts[485] to offset such forgone receipts; and

(E) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (A),[486]

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[483](...continued)
401(c)(2)(C) thus refers to authority that regular appropriations acts do not control.

[484] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[485] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 483.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[486] *See supra* p. 217.

(B),[487] (C),[488] or (D),[489] the budget authority[490] for which is not provided in advance by appropriation Acts.[491]

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

(d) EXCEPTIONS. --

(1) Subsections (a)[492] and (b)[493] shall not apply to new spending authority[494] if the bud-

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[487] *See supra* p. 217.

[488] *See supra* p. 218-220.

[489] *See supra* p. 220.

[490] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[491] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 483.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[492] *See supra* pp. 211-212.

[493] *See supra* pp. 213-216.

[494] Section 401(c) defines "new spending authority." *See supra* pp. 216-221.

get authority[495] for outlays[496] which will result from such new spending authority is derived --

(A) from a trust fund[497] established by the Social Security Act[498] (as in effect on the date of the enactment of this Act[499]); or

(B) from any other trust fund,[500] 90

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[495] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[496] Section 3(1) defines "outlays." *See supra* p. 10.

[497] That is:
-- the Federal Old-Age and Survivors Insurance Trust Fund,
-- the Federal Disability Insurance Trust Fund,
-- the Unemployment Trust Fund,
-- the Federal Hospital Insurance Trust Fund, and
-- the Federal Supplementary Medical Insurance Trust Fund.

[498] The Social Security Act is codified as amended at 42 U.S.C. §§ 301-1397e.

[499] That date is July 12, 1974, the date of enactment of the Congressional Budget Act. Note that the drafters of Gramm-Rudman-Hollings made clear when they meant the date of enactment of Gramm-Rudman-Hollings instead of the date of enactment of the Congressional Budget Act. *See* section 401(d)(3)(A)(ii) *infra* p. 226.

[500] For example, the Highway Trust Fund.

percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays[501] are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.[502]

(2) Subsections (a)[503] And (b)[504] shall not apply to new spending authority[505] which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972,[506] or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such

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[501] Section 3(1) defines "outlays." *See supra* p. 10.

[502] The Internal Revenue Code of 1954 is codified as amended at 26 U.S.C. §§ 1-9602.

[503] *See supra* pp. 211-212.

[504] *See supra* pp. 213-216.

[505] Section 401(c) defines "new spending authority." *See supra* pp. 216-221.

[506] The State and Local Fiscal Assistance Act of 1972, regarding revenue sharing, was codified as amended at 31 U.S.C. §§ 6701-6724. The Consolidated Omnibus Budget Reconciliation Act of 1985 repealed these statutes. Pub. L. No. 99-272, § 14001(a)(1), 100 Stat. 82, 327 (Apr. 7, 1986).

authority.

(3) Subsections (a)[507] and (b)[508] shall not apply to new spending authority[509] to the extent that --

(A) the outlays[510] resulting therefrom are made by an organization which is

(i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act[511]), or

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[507] *See supra* pp. 211-212.

[508] *See supra* pp. 213-216.

[509] Section 401(c) defines "new spending authority." *See supra* pp. 216-221.

[510] Section 3(1) defines "outlays." *See supra* p. 10.

[511] Section 201 of the Government Corporation Control Act is codified as amended at 31 U.S.C. § 9101(2), which states:

§ 9101. Definitions

In this chapter --

. . .

(2) "mixed-ownership Government corporation" means --

(continued...)

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[511](...continued)

(A) Amtrak.

(B) the Central Bank for Cooperatives.

(C) the Federal Deposit Insurance Corporation.

(D) the Federal Home Loan Banks.

(E) the Federal Intermediate Credit Banks.

(F) the Federal Land Banks.

(G) the National Credit Union Administration Central Liquidity Facility.

(H) the Regional Banks for Cooperatives.

(I) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(J) the United States Railway Association.

(K) The Financing Corporation.

31 U.S.C. § 9101(2).

(continued...)

(ii) a wholly owned Government corporation (as defined in section 101 of such Act[512])

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[511](...continued)
Of these mixed-ownership Government corporations, only the Rural Telephone Bank, the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks are "specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. *See* 31 U.S.C. § 9108(d)(2).

[512] Section 101 of the Government Corporation Control Act is codified as amended at 31 U.S.C. § 9101(3), which states:

§ 9101. Definitions

In this chapter --

. . .

(3) "wholly owned Government corporation" means --

(A) the Commodity Credit Corporation.

(B) the Export-Import Bank of the United States.

(C) the Federal Crop Insurance Corporation.

(D) Federal Prison Industries,
(continued...)

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[512](...continued)

Incorporated.

(E) the Federal Savings and Loan Insurance Corporation.

(F) the Government National Mortgage Association.

(G) the Overseas Private Investment Corporation.

(H) the Pennsylvania Avenue Development Corporation.

(I) the Pension Benefit Guaranty Corporation.

(J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(K) the Saint Lawrence Seaway Development Corporation.

(L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.

(M) the Tennessee Valley Authority.

31 U.S.C. § 9101(3).

(continued...)

which is specifically exempted by law from compliance with any or all of the provisions of that Act,[513] as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985;[514] or

(B) the outlays[515] resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

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[512] (...continued)

Of these wholly-owned Government corporations, only the Rural Telephone Bank "is specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. *See* 31 U.S.C. § 9108(d)(2).

[513] Of the Government corporations cited, only the Rural Telephone Bank, the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks are "specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. *See* 31 U.S.C. § 9108(d)(2).

[514] That is, December 12, 1985. Section 211 of Gramm-Rudman-Hollings added the words ", as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985" to clarify which corporations section 401 covered.

[515] Section 3(1) defines "outlays." *See supra* p. 10.

LEGISLATION PROVIDING NEW CREDIT AUTHORITY

SEC. **402.**[516] (a) CONTROLS ON LEGISLATION PROVIDING NEW CREDIT AUTHORITY.[517] -- **It shall not be in**

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[516] Section 402 is codified as amended at 2 U.S.C. § 652.

[517] Section 212 of Gramm-Rudman-Hollings (*see infra* p. 344) repealed the original section 402 and substituted what is now section 402. As originally enacted in 1974, section 402 dealt with the reporting of authorizing legislation:

> ### REPORTING OF AUTHORIZING LEGISLATION
>
> SEC. **402**. (a) REQUIRED REPORTING DATE. -- Except as otherwise provided in this section, it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.
>
> (b) EMERGENCY WAIVER IN THE HOUSE. -- If the Committee on Rules of the House of Representatives determines that emergency conditions require a waiver

(continued...)

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[517](...continued)
of subsection (a) with respect to any bill or resolution, such committee may report, and the House may consider and adopt, a resolution waiving the application of subsection (a) in the case of such a bill or resolution.

(c) WAIVER IN THE SENATE. --

(1) The committee of the Senate which reports any bill or resolution may, at or after the time it reports such bill or resolution, report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution, and (b) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate, within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees, and the time on any debatable

(continued...)

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[517](...continued)

motion or appeal shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply with respect to that bill or resolution referred to in the resolution.

(d) CERTAIN BILLS AND RESOLUTIONS RECEIVED FROM OTHER HOUSE. -- Notwithstanding the provisions of subsection (a), if under that subsection it is in order in the House of Representatives to consider a bill or resolution of the House, then it shall be in order to consider a companion or similar bill or resolution of the Senate; and if under that subsection it is in order in the Senate to consider a bill or resolution of the Senate, then it shall be in order to consider a companion or similar bill of the House of Representatives.

(e) EXCEPTIONS. --

(1) Subsection (a) shall not apply with respect to new spending authority described in

(continued...)

order[518] in either the House of Representatives or the Senate to consider any bill, resolution, or conference report, as reported[519] to its House, or any amendment[520] which provides new credit

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[517](...continued)

section 401(c)(2)(C).

(2) Subsection (a) shall not apply with respect to new budget authority authorized in a bill or resolution for any provision of the Social Security Act if such bill or resolution also provides new spending authority described in section 401(c)(2)(C) which, under section 401(d)(1)(A), is excluded from the application of section 401(b).

(f) STUDY OF EXISTING SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS. -- The Committees on Appropriations of the House of Representatives and the Senate shall study on a continuing basis those provisions of law, in effect on the effective date of this section, which provide spending authority or permanent budget authority. Each committee shall, from time to time, report to its House its recommendations for terminating or modifying such provisions.

[518] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[519] *Cf. supra* note 431 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

[520] An amendment is subject to points of order under the (continued...)

authority[521] described in subsection (b)(1),[522] unless that bill, resolution, conference report, or amendment also provides that such new credit authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.[523]

(b) DEFINITION. -- For purposes of this Act, the term "new credit authority" means credit authority (as defined in section 3(10)[524] of this

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[520](...continued)
Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[521] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 435 (regarding section 311(a)).

[522] This appears so in the original; it should read "(b)." *See infra*.

[523] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 483.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[524] Section 3(10) states:

> The term "credit authority" means authority to incur direct loan obligations or to incur primary loan guar-

(continued...)

Act) not provided by law on the effective date of this section,[525] including any increase in or addition to credit authority provided by law on such date.

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[524](...continued)
antee commitments.

See supra p. 24.

[525] Section 275(a)(2)(B) of Gramm-Rudman-Hollings provides that this section became effective on February 1, 1986. *See infra* p. 565.

ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

SEC. 403.[526] (a) The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee --

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;

(2)[527] an estimate of the cost which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution in the fiscal year in which it is to become effective and in each of the four

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[526] Section 403 is codified as amended at 2 U.S.C. § 653.

[527] The State and Local Cost Estimate Act of 1981 added paragraph (2). Pub. L. No. 97-108, § 2(a)(3), 95 Stat. 1510 (Dec. 23, 1981).

fiscal years following such fiscal year, together with the basis for each such estimate;

(3) a comparison of the estimates of costs described in paragraphs (1)[528] and (2),[529] with any available estimates of costs made by such committee or by any Federal agency; and

(4)[530] a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description[531] so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

(b)[532] For purposes of subsection (a)(2),[533] the

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[528] *See supra* p. 235.

[529] *See supra* pp. 235-236.

[530] Section 213(a) of Gramm-Rudman-Hollings added paragraph (4). *See infra* p. 345.

[531] Section 213(b) of Gramm-Rudman-Hollings added "description" to this list. *See infra* p. .

[532] The State and Local Cost Estimate Act of 1981 added (continued...)

term "local government" has the same meaning as in section 103[534] of the Intergovernmental Cooperation Act of 1968.

(c)[535] For purposes of subsection (a)(2),[536] the term "significant bill or resolution" is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to State and local governments of $200,000,000 or more, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government.

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[532](...continued)
subsections (b) and (c). Pub. L. No. 97-108, § 2(a)(7), 95 Stat. 1510 (Dec. 23, 1981).

[533] *See supra* pp. 235-236.

[534] Section 103 of the Intergovernmental Cooperation Act of 1968 is codified, as amended, at 31 U.S.C. § 6501, which states (in relevant part):

> (6) "local government" means a unit of general local government, a school district, or other special district established under State law.

31 U.S.C. § 6501(6)

[535] The State and Local Cost Estimate Act of 1981 added subsections (b) and (c). Pub. L. No. 97-108, § 2(a)(7), 95 Stat. 1510 (Dec. 23, 1981).

[536] *See supra* pp. 235-236.

JURISDICTION OF APPROPRIATIONS COMMITTEES

SEC. 404. (a) AMENDMENT OF HOUSE RULES.--Clause 2 of rule XI of the Rules of the House of Representatives is amended by redesignating paragraph (b) as paragraph (e) and by inserting after paragraph (a) the following new paragraphs:

> **"(b) Rescission of appropriations contained in appropriations Acts (referred to in section 105[537] of title 1, United States Code).**
>
> **"(c) The amount of new spending authority described in section 401(c)(2)(A)[538] and (B)[539] of the Congressional**

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[537] Section 105 of title 1 of the U.S. Code provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105.

[538] *See supra* p. 217.

Budget Act of 1974 which is to be effective for a fiscal year.

"(d) New spending authority described in section 401(c)(2)(C)[540] of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2)[541] of that Act (but subject to the provisions of section 401(b)(3)[542] of that Act)."

(b) AMENDMENT OF SENATE RULES. -- Subparagraph (c) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended to read as follows:

"(c) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Except as provided in subparagraph (r), appropriation of the

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[539](...continued)

[539] *See supra* p. 217.

[540] *See supra* pp. 218-220.

[541] *See supra* pp. 214-215.

[542] *See supra* p. 215.

revenue for the support of the Government.

"2. Rescission of appropriations contained in appropriation Acts (referred to in section 105[543] of title 1, United States Code).

"3. The amount of new spending authority described in section 401(c)(2) (A)[544] and (B)[545] of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2)[546] of that Act (but subject to the provisions of section 401(b)(3)[547]

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[543] Section 105 of title 1 of the U.S. Code provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105.

[544] *See supra* p. 217.

[545] *See supra* p. 217.

[546] *See supra* pp. 214-215.

[547] *See supra* p. 215.

of that Act).

"4. New advance spending authority described in section 401(c)(2)(C)[548] of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2)[549] of that Act (but subject to the provisions of section 401(b)(3)[550] of that Act)."

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[548] *See supra* pp. 218-220.

[549] *See supra* pp. 214-215.

[550] *See supra* p. 215.

STUDY BY THE GENERAL ACCOUNTING OFFICE OF FORMS OF FEDERAL FINANCIAL COMMITMENT THAT ARE NOT REVIEWED ANNUALLY BY CONGRESS

SEC. 405.[551] The General Accounting Office shall study those provisions of law which provide spending authority as described by section 401(c)(2)[552] and which provide permanent appropriations, and report to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after the effective date of this section. Such report shall be revised from time to time.

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[551] Section 214 of Gramm-Rudman-Hollings added sections 405-407. *See infra* 346. Section 405 is codified at 2 U.S.C. § 654.

[552] *See supra* pp. 216-221.

OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

SEC. 406.[553] (a) Notwithstanding any other provision of law, budget authority,[554] credit authority,[555] and estimates of outlays[556] and receipts for activities of the Federal budget which are off-budget immediately prior to the date of enactment of this section, not including activities of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds,[557] shall be included[558] in a budget submitted pursuant to section 1105 of title 31, United States Code, and in a concurrent resolution on the

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[553] Section 214 of Gramm-Rudman-Hollings added sections 405-407. *See infra* 346. Section 406 is codified at 2 U.S.C. § 655.

[554] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[555] Section 3(10) defines "credit authority." *See supra* p. 24.

[556] Section 3(1) defines "outlays." *See supra* p. 10.

[557] The Social Security Act creates these trust funds at 42 U.S.C. § 401(a) and § 401(b), respectively.

[558] Note the parallel requirements of section 3(6). *See supra* p. 19. Despite this effort to include entities in the budgetary totals, Congress has created several new off-budget entities. *See supra* note 45.

budget reported pursuant to section 301[559] or section 304[560] of this Act and shall be considered, for purposes of this Act, budget authority,[561] outlays,[562] and spending authority[563] in accordance with definitions set forth in this Act.

(b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal agency shall be treated as a means of financing such agency for purposes of section 1105[564] of title 31, United States Code, and for purposes of this Act.

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[559] *See supra* pp. 59-93.

[560] *See supra* pp. 128-130.

[561] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[562] Section 3(1) defines "outlays." *See supra* p. 10.

[563] Section 401(c)(2) defines "spending authority." *See supra* pp. 216-221.

[564] Section 1105, entitled "Budget contents and submission to Congress," deal with the executive department's budget submission.

MEMBER USER GROUP

SEC. 407.[565] The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.

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[565] Section 214 of Gramm-Rudman-Hollings added sections 405-407. *See infra* 346. Section 407 is codified at 2 U.S.C. § 656.

TITLE V
CHANGE OF FISCAL YEAR[566]

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[566] Public Law 97-258 repealed sections 501-504. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Section 501 was codified in section 1102 of title 31. Section 503 was codified in section 1552 of title 31. As originally enacted in 1974, sections 501-504 read as follows:

FISCAL YEAR TO BEGIN ON OCTOBER 1

SEC. **501**. Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"SEC. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations --

"(1) shall, through June 30, 1976, commence on July 1 of each year and end on June 30 of the following year; and

"(2) shall, beginning on October 1, 1976, commence on October 1 of each year and end on Septem-

(continued...)

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[566] (...continued)
ber 30 of the following year.

"(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

TRANSITION TO NEW FISCAL YEAR

SEC. 502. (a) As soon as practicable, the President shall prepare and submit to the Congress--

(1) after consultation with the Committees on Appropriations of the House of Representatives and the Senate, budget estimates for the United States Government for the period commencing July 1, 1976, and ending on September 30, 1976, in such form and detail as he may determine; and

(2) proposed legislation he considers appropriate with respect to changes in law necessary to provide authorizations of appropriations for that period.

(b) The Director of the Office of Management and Budget shall provide by regulation, order, or otherwise for the orderly transition by all departments, agencies, and instrumentalities of the United States Government and the government of the District of Columbia from the use of the fiscal year in effect on the date of enactment of this Act to the use of the new

(continued...)

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[566](...continued)
fiscal year prescribed by section 237(a)(2) of the Revised Statutes. The Director shall prepare and submit to the Congress such additional proposed legislation as he considers necessary to accomplish this objective.

(c) The Director of the Office of Management and Budget and the Director of the Congressional Budget Office jointly shall conduct a study of the feasibility and advisability of submitting the Budget or portions thereof, and enacting new budget authority or portions thereof, for a fiscal year during the regular session of the Congress which begins in the year preceding the year in which such fiscal year begins. The Director of the Office of Management and Budget and the Director of the Congressional Budget Office each shall submit a report of the results of the study conducted by them, together with his own conclusions and recommendations, to the Congress not later than 2 years after the effective date of this subsection.

ACCOUNTING PROCEDURES

SEC. **503**. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes", approved July 25, 1956, as amended (31 U.S.C. 701) is amended to read as follows:

> "(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision

(continued...)

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[566](...continued)

> thereof responsible for the liquidation of the obligation, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".

(b) Subsection (b) of such section is amended to read as follows:

> "(b)(1) Any obligated balance referred to in subsection (a)(1) of this section shall be transferred as follows:
>
> > "(A) for any fiscal year or years ending on or before June 30, 1976, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and
> >
> > "(B) for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976, on September 30 of the second fiscal year following that period or the fiscal years or years as the case may be, for which the appropriation is available for obligation.
>
> "(2) The withdrawals required by subsection (a)(2) of this section shall be made --

(continued...)

CONVERSION OF AUTHORIZATIONS OF APPROPRIATIONS

SEC. **504**. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1975, be considered as meaning October 1 of that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1976, be considered as meaning September 30 of that year. Any law providing for an authorization of appropriations for the fiscal year 1977 or any fiscal year thereafter shall be construed as referring to that fiscal year ending on September 30 of the calendar year having the same calendar year number as the fiscal year number.

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[566] (...continued)

"(A) for any fiscal year ending on or before June 30, 1976, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

"(B) for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976, not later than November 15 following such period or fiscal year, as the case may be, in which the period of availability for obligation expires."

REPEALS

SEC. 505. The following provisions of law are repealed:

(1) the ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1022; 2 U.S.C. 66); and

(2) the proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appropriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

TECHNICAL AMENDMENT

SEC. 506. (a) Section 105[567] of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "September 30".

(b) The provisions of subsection (a) of this section shall be effective with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after October 1, 1976.

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[567] Section 105 of title 1 of the U.S. Code now provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105.

TITLE VI AMENDMENTS TO BUDGET AND ACCOUNTING ACT, 1921[568]

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[568] Public Law 97-258 repealed sections 601-605 and 607. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). Section 223 of Gramm-Rudman-Hollings repealed section 606. *See infra* p. 350. Sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, sections 601-607 read as follows:

MATTERS TO BE INCLUDED IN PRESIDENT'S BUDGET

SEC. 601. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11) is amended by adding at the end thereof the following new subsections:

> "(d) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth separately the items enumerated in section 301(a)(1)-(5) of the Congressional Budget Act of 1974.

(continued...)

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[568](...continued)

"(e) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth the levels of tax expenditures under existing law for such fiscal year (the tax expenditure budget), taking into account projected economic factors, and any changes in such existing levels based on proposals contained in such Budget. For purposes of this subsection, the terms "tax expenditures" and "tax expenditures budget" have the meanings given to them by section 3(a)(3) of the Congressional Budget Act of 1974.

"(f) The Budget transmitted pursuant to subsection (a) for each fiscal year shall contain --

"(1) a comparison, for the last completed fiscal year, of the total amount of outlays estimated in the Budget transmitted pursuant to subsection (a) for each major program involving uncontrollable outlays and the total amount of outlays made under each such major program during such fiscal year;

"(2) a comparison, for the last completed fiscal year, of the total amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the total amount of revenues received during such year,

(continued...)

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[568] (...continued)

and, with respect to each major revenue source, the amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the amount of revenues received during such year; and

"(3) an analysis and explanation of the difference between each amount set forth pursuant to paragraphs (1) and (2) as the amount of outlays or revenues estimated in the Budget submitted under subsection (a) for such fiscal year and the corresponding amount set forth as the amount of outlays made or revenues received during such fiscal year.

"(g) The President shall transmit to the Congress, on or before April 10 and July 15 of each year, a statement of all amendments to or revisions in the budget authority requested, the estimated outlays, and the estimated receipts for the ensuing fiscal year set forth in the Budget transmitted pursuant to subsection (a) (including any previous amendments or revisions proposed on behalf of the executive branch) that he deems necessary and appropriate based on the most current information available. Such statement shall contain the effect of such amendments and revisions on the summary data submitted under subsection (a) and shall

(continued...)

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[568] (...continued)

include such supporting detail as is practicable. The statement transmitted on or before July 15 of any year may be included in the supplemental summary required to be transmitted under subsection (b) during such year. The Budget transmitted to the Congress pursuant to subsection (a) for any fiscal year, or the supporting detail transmitted in connection therewith, shall include a statement of all such amendments and revisions with respect to the fiscal year in progress made before the date of transmission of such Budget.

"(h) The Budget transmitted pursuant to subsection (a) for each fiscal year shall include information with respect to estimates of appropriations for the next succeeding fiscal year for grants, contracts, or other payments under any program for which there is an authorization of appropriations for such succeeding fiscal year and such appropriations are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year in which the appropriation is to be available for obligation.

"(i) The Budget transmitted pursuant to subsection (a) for each fiscal year, beginning with the fiscal year ending September 30, 1979, shall contain a presentation of budget authority, proposed budget authority, outlays, proposed outlays, and descriptive information in terms

(continued...)

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[568] (...continued)
of --

"(1) a detailed structure of national needs which shall be used to reference all agency missions and programs;

"(2) agency missions; and

"(3) basic programs.

To the extent practicable, each agency shall furnish information in support of its budget requests in accordance with its assigned missions in terms of Federal functions and subfunctions, including mission responsibilities of component organizations, and shall relate its programs to agency missions."

MIDYEAR REVIEW

SEC. **602**. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by striking out "on or before June 1 of each year, beginning with 1972" and inserting in lieu thereof "on or before July 15 of each year".

FIVE-YEAR BUDGET PROJECTIONS

SEC. **603**. Section 201(a) of the Budget and

(continued...)

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[568] (...continued)
Accounting Act, 1921 (31 U.S.C. 11), is amended --

(1) by inserting after "ensuing fiscal year" in paragraph (5) "and projections for the four fiscal years immediately following the ensuing fiscal year";

(2) by striking out "such year" in paragraph (5) and inserting in lieu thereof "such years"; and

(3) by inserting after "ensuing fiscal year" in paragraph (6) "and projections for the four fiscal years immediately following the ensuing fiscal year".

ALLOWANCES FOR SUPPLEMENTAL BUDGET AUTHORITY AND UNCONTROLLABLE OUTLAYS

SEC. **604**. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is further amended --

(1) by striking out "and" at the end of paragraph (11);

(2) by striking out the period at the end of paragraph (12) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

(continued...)

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[568](...continued)

> "(13) an allowance for additional estimated expenditures and proposed appropriations for the ensuing fiscal year, and an allowance for unanticipated uncontrollable expenditures for the ensuing fiscal year."

BUDGET DATA BASED ON CONTINUATION OF EXISTING LEVEL OF SERVICES

SEC. **605**. (a) On or before November 10 of each year (beginning with 1975), the President shall submit to the Senate and the House of Representatives the estimated outlays and proposed budget authority which would be included in the Budget to be submitted pursuant to section 201 of the Budget and Accounting Act, 1921, for the ensuing fiscal year if all programs and activities were carried on during such ensuing fiscal year at the same level as the fiscal years in progress and without policy changes in such programs and activities. The estimated outlays and proposed budget authority submitted pursuant to this section shall be shown by function and subfunctions (in accordance with the classifications in the budget summary table entitled "Budget Authority and Outlays by Function and Agency"), by major programs within each such function, and by agency. Accompanying these estimates shall be the economic and programmatic assumptions underlying the estimated outlays and proposed budget authority, such as the rate of

(continued...)

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[568](...continued)
inflation, the rate of real economic growth, the unemployment rate, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated outlays and proposed budget authority so submitted, and shall submit to the Committees on the Budget of both Houses an economic evaluation thereof on or before December 31 of each year.

STUDY OF OFF-BUDGET AGENCIES

SEC. **606**. The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis those provisions of law which exempt agencies of the Federal Government, or any of their activities or outlays, from inclusion in the Budget of the United States Government transmitted by the President under section 201 of the Budget and Accounting Act, 1921. Each committee shall, from time to time, report to its House its recommendations for terminating or modifying such provisions.

YEAR-AHEAD REQUESTS FOR AUTHORIZATION OF NEW BUDGET AUTHORITY

SEC. **607**. Notwithstanding any other provision of law, any request for the enactment of legislation authorizing the enactment of new budget authority to

(continued...)

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[568] (...continued)
continue a program or activity for a fiscal year (beginning with the fiscal year commencing October 1, 1976) shall be submitted to the Congress not later than May 15 of the year preceding the year in which the fiscal year begins. In the case of a request for the enactment of legislation authorizing the enactment of new budget authority for a new program or activity which is to continue for more than one fiscal year, such request shall be submitted for at least the first 2 fiscal years.

TITLE VII
PROGRAM REVIEW AND EVALUATION

REVIEW AND EVALUATION BY STANDING COMMITTEES

SEC. 701. Section 136(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190d) is amended by adding at the end thereof the following new sentences: "Such committees may carry out the required analysis, appraisal, and evaluation themselves, or by contract, or may require a Government agency to do so and furnish a report thereon to the Congress. Such committees may rely on such techniques as pilot testing, analysis of costs in comparison with benefits, or provision for evaluation after a defined period of time."[569]

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[569] Public Law 97-258 repealed section 702. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Section 702 was codified in sections 702, 717, 719, and 731 of title 31. As

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[569](...continued)
originally enacted in 1974, section 702 read as follows:

REVIEW AND EVALUATION BY THE COMPTROLLER GENERAL

SEC. **702**. (a) Section 204 of the Legislative Reorganization Act of 1970 (31 U.S.C. 1154) is amended to read as follows:

"REVIEW AND EVALUATION

"SEC. 204. (a) The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

"(b) The Comptroller General, upon request of any committee of either House or any joint committee of the two Houses shall --

"(1) assist such committee or joint committee in developing a statement of legislative objectives and goals and methods for assessing and reporting actual program performance in relation to such legisla-

(continued...)

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[569] (...continued)

tive objectives and goals. Such statements shall include, but are not limited to, recommendations as to methods of assessment, information to be reported, responsibility for reporting, frequency of reports, and feasibility of pilot testing; and

"(2) assist such committee or joint committee in analyzing and assessing program reviews or evaluation studies prepared by and for any Federal agency.

Upon request of any Member of either House, the Comptroller General shall furnish to such Member a copy of any statement or other material compiled in carrying out paragraphs (1) and (2) which has been released by the committee or joint committee for which it was compiled.

"(c) The Comptroller General shall develop and recommend to the Congress methods for review and evaluation of Government programs and activities carried on under existing law.

"(d) In carrying out his responsibilities under this section, the Comptroller General is authorized to establish an Office of Program Review and Evaluation within the General Accounting Office. The Comptroller General is authorized to employ not to exceed ten experts on a

(continued...)

CONTINUING STUDY OF ADDITIONAL BUDGET REFORM PROPOSALS

SEC. 703. (a) The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis proposals designed to improve and facilitate methods of congressional budget-making. The proposals to

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[569](...continued)

permanent, temporary, or intermittent basis and to obtain services as authorized by section 3109 of title 5, United States Code, but in either case at a rate (or the daily equivalent) for individuals not to exceed that prescribed, from time to time, for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(e) The Comptroller General shall include in his annual report to the Congress a review of activities under this section, including his recommendations of methods for review and evaluation of Government programs and activities under subsection (c)."

(b) Item 204 in the table of contents of such Act is amended to read as follows:

"Sec. 204. Review and evaluation."

be studied shall include, but are not limited to, proposals for --

(1) improving the information base required for determining the effectiveness of new programs by such means as pilot testing, survey research, and other experimental and analytical techniques;

(2) improving analytical and systematic evaluation of the effectiveness of existing programs;

(3) establishing maximum and minimum time limitations for program authorization; and

(4) developing techniques of human resource accounting and other means of providing noneconomic as well as economic evaluation measures.

(b) The Committee on the Budget of each House shall, from time to time, report to its House the results of the study carried on by it under subsection (a),[570] together with its recommendations.

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[570] *See supra* pp. 268-269.

(c) Nothing in this section shall preclude studies to improve the budgetary process by any other committee of the House of Representatives or the Senate or any joint committee of the Congress.

TITLE VIII
FISCAL AND BUDGETARY INFORMATION AND CONTROLS[571]

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[571] Public Law 97-258 repealed sections 801 and 802. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Sections 801 and 802 were codified in sections 1104, 1112, and 1113 of title 31. As originally enacted in 1974, sections 801 and 802 read as follows:

AMENDMENT TO LEGISLATIVE REORGANIZATION ACT OF 1970

SEC. 801. (a) So much of title II of the Legislative Reorganization Act of 1970 (31 U.S.C. chapter 22) as precedes section 204 thereof is amended to read as follows:

"TITLE II -- FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1 -- FISCAL, BUDGETARY AND PROGRAM-RELATED DATA AND INFORMATION

(continued...)

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[571](...continued)

"FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION SYSTEMS

"SEC. 201. The Secretary of the Treasury and the Director of the Office of Management and Budget, in cooperation with the Comptroller General of the United States, shall develop, establish, and maintain, for use by all Federal agencies, standardized data processing and information systems for fiscal, budgetary, and program-related data and information. The development, establishment, and maintenance of such systems shall be carried out so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level.

"STANDARDIZATION OF TERMINOLOGY, DEFINITIONS, CLASSIFICATIONS, AND CODES FOR FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 202. (a)(1) The Comptroller General of the United States, in cooperation with the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Director of the Congressional Budget Office, shall develop, establish, maintain, and publish standard termi-

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[571](...continued)

nology, definitions, classifications, and codes for Federal fiscal, budgetary, and program-related data and information. The authority contained in this section shall include, but not be limited to, data and information pertaining to Federal fiscal policy, revenues, receipts, expenditures, functions, programs, projects, and activities. Such standard terms, definitions, classifications, and codes shall be used by all Federal agencies in supplying to the Congress fiscal, budgetary, and program-related data and information.

"(2) The Comptroller General shall submit to the Congress, on or before June 30, 1975, a report containing the initial standard terminology, definitions, classifications, and codes referred to in paragraph (1), and shall recommend any legislation necessary to implement them. After June 30, 1975, the Comptroller General shall submit to the Congress additional reports as he may think advisable, including any recommendations for any legislation he may deem necessary to further the development, establishment, maintenance, modification, and executive implementation of such standard terminology, definitions, classifications, and codes.

"(b) In carrying out this responsibility, the Comptroller General of the United States shall give particular consideration to the needs of the Committees on the Bud-

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[571](...continued)

get of the House and Senate, The Committees on Appropriations of the House and Senate, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Congressional Budget Office.

"(c) The Comptroller General of the United States shall conduct a continuing program to identify and specify the needs of the committees and Members of Congress for fiscal, budgetary, and program-related information to support the objectives of this part.

"(d) The Comptroller General shall assist committees in developing their information needs, including such needs expressed in legislative requirements, and shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in their reporting requirements to meet congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users and to eliminate duplicative or unneeded reporting.

"(e) On or before September 1, 1974, and each year thereafter, the Comptroller General shall report to the Congress on needs identified and specified under

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[571] (...continued)

subsection (c); the relationship of these needs to the existing reporting requirements; the extent to which the executive branch reporting presently meets the identified needs; the specification of changes to standard classifications needed to meet congressional needs; the activities, progress and results of his activities under subsection (d); and the progress that the executive branch has made during the past year.

"(f) On or before March 1, 1975, and each year thereafter, the Director of the Office of Management and Budget and the Secretary of the Treasury shall report to the Congress on their plans for addressing the needs identified and specified under subsection (c), including plans for implementing changes to classifications and codes to meet the information needs of the Congress as well as the status of prior year system and classification implementations.

"AVAILABILITY TO AND USE BY THE CONGRESS AND STATE AND LOCAL GOVERNMENTS OF FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 203. (a) Upon request of any

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[571] (...continued)

committee of either House, of any joint committee of the two Houses, of the Comptroller General, or of the Director of the Congressional Budget Office, the sEcretary of the Treasury, the Director of the Office of Management and Budget, and the heads of the various executive agencies shall --

"(1) furnish to such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office information as to the location and nature of available fiscal, budgetary, and program-related data and information;

"(2) to the extent practicable, prepare summary tables of such data and information and any related information deemed necessary by such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office; and

"(3) furnish to such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office any program evaluations conducted or commissioned by any executive agency.

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[571](...continued)

"(b) The Comptroller General, in cooperation with the Director of the Congressional Budget Office, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall-

"(1) develop, establish, and maintain an up-to-date inventory and directory of sources and information systems containing fiscal, budgetary, and program-related data and information and a brief description of their content;

"(2) provide, upon request, assistance to committees, joint committees, and Members of Congress in securing Federal fiscal, budgetary, and program-related data and information from the sources identified in such inventory and directory; and

"(3) furnish, upon request, assistance to committees and joint committees of Congress and, to the extent practicable, to Members of Congress in appraising and analyzing fiscal, budgetary, and program-related data and information secured from the sources identified in such inventory and directory.

"(c) The Comptroller General and

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[571](...continued)

the Director of the Congressional Budget Office shall, to the extent they deem necessary, develop, establish, and maintain a central file or files of the data and information required to carry out the purposes of this title. Such a file or files shall be established to meet recurring requirements of the Congress for fiscal, budgetary, and program-related data and information and shall include, but not be limited to, data and information pertaining to budget requests, congressional authorizations to obligate and spend, apportionment and reserve actions, and obligations and expenditures. Such file or files and their indexes shall be maintained in such a manner as to facilitate their use by the committees of both Houses, joint committees, and other congressional agencies through modern data processing and communication techniques.

"(d) The Director of the Office of Management and Budget, in cooperation with the Director of the Congressional Budget Office, the Comptroller General, and appropriate representatives of State and local governments, shall provide, to the extent practicable, State and local governments such fiscal, budgetary, and program-related data and information as may be necessary for the accurate and timely determination by these governments of the impact of Federal assistance upon their budgets."

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[571] (...continued)

(b) The table of contents of the Legislative Reorganization Act of 1970 is amended by striking out --

"TITLE II -- FISCAL CONTROLS

"PART 1 -- BUDGETARY AND FISCAL INFORMATION AND DATA

"Sec. 201. Budgetary and fiscal data processing system.
"Sec. 202. Budget standard classifications.
"Sec. 203. Availability to Congress of budgetary, fiscal, and related data."

and inserting in lieu thereof --

"TITLE II -- FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1 -- FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"Sec. 201. Federal fiscal, budgetary, and program-related data and information systems.
"Sec. 202. Standardization of terminology, definitions, classifications, and codes for fiscal, budgetary, and program-related data and information.
"Sec. 203. Availability to and use by the Congress and State and local governments of Federal fiscal, budget-

(continued...)

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[571](...continued)

ary, and program-related data and information."

CHANGES IN FUNCTIONAL CATEGORIES

SEC. **802**. Any change in the functional categories set forth in the Budget of the United State Government transmitted pursuant to section 201 of the Budget and Accounting Act, 1921, shall be made only in consultation with the Committees on Appropriations and the Budget of the House of Representatives and Senate.

TITLE IX
MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

AMENDMENTS TO RULES OF THE HOUSE

SEC. 901. (a) Rule XI of the Rules of the House of Representatives (as amended by section 101(c) of this Act) is amended by inserting immediately after clause 22 the following new clause:

> "22A. The respective areas of legislative jurisdiction under this rule are modified by title I of the Congressional Budget Act of 1974."

(b) Paragraph (c) of clause 29 of Rule XI of the Rules of the House of Representatives (as redesignated by section 101(c)[572] of this Act) is amended by inserting "the Committee on the Budget," immediately after "the Committee on

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[572] *See supra* pp. 28-29.

Appropriations,".

(c) Subparagraph (5) of paragraph (a) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately before the period at the end thereof.

(d) Subparagraph (4) of paragraph (b) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately before the period at the end hereof.[573]

(e) Paragraph (d) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by striking out "the Committee on Appropriations may appoint" and inserting in lieu thereof "the Committee on Appropriations and the Committee on the Budget may each appoint".

(f) Clause 32 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,".

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[573] This is so in the original; it should read "thereof."

(g) Paragraph (a) of clause 33 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately after "the Committee on Appropriations".

CONFORMING AMENDMENTS TO STANDING RULES OF THE SENATE

SEC. 902. Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended --

(1) by striking out "Revenue" in subparagraph (h)1 and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, revenue";

(2) by striking out "The" in subparagraph (h)2 and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, the"; and

(3) by striking out "Budget" in subparagraph (j)(1)(A) and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, budget".

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1946

SEC. 903. (a) Section 134(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190b(b)[574]) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(b) Section 136(c) of such Act (2 U.S.C. 190d(c)[575]) is amended by striking out "Committee on Appropriations of the Senate and the Committees on Appropriations," and inserting in lieu thereof "Committees on Appropriations and the Budget of the Senate and the Committees on Appropriations, the Budget,".

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[574] S. Res. 274, 96th Cong., 1st Sess. § 2(a), 125 CONG. REC. S16,588, S16,602 (Nov. 14, 1979), repealed 2 U.S.C. § 190b.

[575] S. Res. 274, 96th Cong., 1st Sess. § 2(a), 125 CONG. REC. S16,588, S16,602 (Nov. 14, 1979), repealed 2 U.S.C. § 190d insofar as it related to the Senate. The exception for the Budget Committee that section 903(b) created to the requirement of all committees to submit biennial reports of their activities survives in rule XXVI(8) of the Standing Rules of the Senate.

EXERCISE OF RULEMAKING POWERS

SEC. 904. (a) The provisions of this title (except section 905[576]) and of titles I,[577] III,[578] and IV[579] and the provisions of sections 606,[580] 701,[581] 703,[582] and 1017[583] are enacted by the Congress--

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent

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[576] Section 905 deals with effective dates. *See infra* pp. 293-295.

[577] *See infra* pp. 25-33.

[578] *See supra* pp. 53-210.

[579] *See supra* pp. 211-245.

[580] *See supra* note 568. Section 223 of Gramm-Rudman-Hollings repealed section 606. *See infra* p. 350.

[581] *See supra* p. 265.

[582] *See supra* pp. 268-270.

[583] *See infra* pp. 322-332.

that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any provision[584] of title III[585] or IV[586] may

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[584] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 543. (Section 211 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added section 302(c) to the list of points of order with this requirement. Pub. L. No. 101-119, 101 Stat. 754, 787 (1987) (codified at 2 U.S.C. § 901 note).) Section 275(b)(2)(D) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1993. *See infra* p. 566.

Note that section 904(c) similarly provides that the Senate may waive sections 305(b)(2) and 306 only by the affirmative vote of 60 Senators. *See infra* pp. 290-291. In connection with reconciliation, subsection (b) of the Byrd Rule also provides that the Senate may waive the germaneness requirements of section 305(b)(2) only by the affirmative vote of 60 Senators. *See infra* pp. 596-597.

Note that the Senate may also waive section 303(a) pursuant to section 303(c). *See supra* pp. 124-127.

[585] *See supra* pp. 53-210.

be waived[587] or suspended in the Senate by a

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[586] (...continued)

[586] *See supra* pp. 211-245.

[587] Once the Chair has ruled on a point of order, it is too late to move to waive the provision on which the point of order was based. 128 Cong. Rec. S8,884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (attempt to waive by Sen. Thurmond during debate on the Tax Reconciliation Act of 1982).

A motion to waive a provision of the Congressional Budget Act is debatable. *See, e.g.,* 133 Cong. Rec. S5,381 (1987); Senate Precedent PRL198704123-002 (Apr. 23, 1987) (LEGIS, Rules database) (inquiry of Sen. Harkin); 132 Cong. Rec. S16,420 (Oct. 16, 1986) (inquiries of Sens. Simpson & Domenici); 132 Cong. Rec. S14,202 (Sept. 29, 1986); 132 Cong. Rec. S318 (Jan. 27, 1986) (inquiry of Sen. Metzenbaum). Contrast the limited debate allowable under a waiver resolution pursuant to section 303(c). *See supra* pp. 97-100.

In contrast, the Chair will permit debate after a point of order is raised under the Congressional Budget Act at the Chair's discretion. *See* 132 Cong. Rec. S13,522 (Sept. 24, 1986) (point of order under section 302(f)).

When a Senator makes a motion to waive under during the consideration of a budget resolution or a reconciliation bill, debate is limited to one hour, as specified by section 305(b)(2), *see supra* p. 137, and as applied to reconciliation by section 310(e)(1), *see supra* p. 191. *See also* 131 Cong. Rec. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database) (reconciliation).

A motion to waive may permissibly waive all requirements of the Congressional Budget Act generally. 130 Cong. Rec. S7,102 (June 13, 1984). A motion to waive the germaneness

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[587](...continued)
requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

A motion to waive may permissibly waive provisions of the Congressional Budget Act for a bill and "any amendments thereto." 130 CONG. REC. S7,919, S8,011 (1984); Senate Precedent PRL19840621-001 (June 21, 1984) (LEGIS, Rules database).

A motion to waive is amendable. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database). It takes unanimous consent to modify a motion (such as a motion to waive) after the yeas and nays have been ordered on it. *Id.*

A Senator is entitled to withdraw a point of order the Senator made if the Senate has taken no action on it. 128 CONG. REC. S10,069-71 (1982); Senate Precedent PRL19820810-006 (Aug. 10, 1982) (LEGIS, Rules database) (inquiry Sen. Leahy regarding point of order under rule XV on a supplemental appropriations bill). Once the Chair has ruled on a point of order, it is too late to withdraw the point of order. 128 CONG. REC. S8,884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (attempt by Sen. Dole to withdraw his point of order to a Thurmond amendment to the Tax Reconciliation Act of 1982).

A motion to waive is subject to a motion to table when time has expired or been yielded back. 131 CONG. REC. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database).

(continued...)

majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

(c)[588] Sections 305(b)(2)[589] and 306[590] of this

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[587](...continued)

Any motion in the Senate must be submitted in writing upon the request of any Senator. *Id.*

[588] Section 271(a) of Gramm-Rudman-Hollings added section 904(c). *See infra* p. 543.

[589] For examples of motions under section 904 to waive section 305(b), see, *e.g.*, 133 CONG. REC. S17,652-53 (Dec. 10, 1987) (Harkin motion to waive rejected 47-49 regarding his amendment no. 1257 to S. 1920, the Omnibus Budget Reconciliation Act of 1987); 133 CONG. REC. S17,600 (Dec. 10, 1987) (Majority Leader Byrd's motion to waive section 305(b) and other sections approved 81-13 regarding specified amendments and motion to recommit regarding S. 1920, the Omnibus Budget Reconciliation Act of 1987).

Note that, in connection with reconciliation, subsection (b) of the Byrd Rule also provides that the Senate may waive the germaneness requirements of section 305(b)(2) only by the affirmative vote of 60 Senators. *See infra* pp. 596-597.

[590] For examples of motions under section 904 to waive section 306, see, *e.g.*, 133 CONG. REC. S11,025 (July 31, 1987) (Conrad motion to waive rejected 36-53 regarding his amendment no. 651 to H.J. Res. 324, Increase in the Public Debt Limit); 133 CONG. REC. S10,584 (July 23, 1987) (Domenici motion to waive rejected 47-49 regarding his amendment no. 631 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 133 CONG. REC.

(continued...)

Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.[591]

(d) Appeals in the Senate from the decisions of the Chair relating to any provision of title III[592] **or IV**[593] **or section 1017**[594] **shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case**

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[590] (...continued)
S10,579 (July 23, 1987) (Chiles motion to waive approved 71-25 regarding his modified amendment no. 626 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 129 CONG. REC. S3,587-603 (Mar. 22, 1983) (Heinz motion to waive rejected 56-41 regarding his amendment to remove Social Security trust funds from the unified budget).

[591] That is, 60 Senators, no matter how many Senators are present and voting.

[592] *See supra* pp. 53-210.

[593] *See supra* pp. 211-245.

[594] *See infra* pp. 322-332.

may be.[595]

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[595] Compare the similar provisions for control and division of time on appeals in section 305(b)(2), which provide for time for the minority leader under certain circumstances. *See supra* p. 138.

Despite the legislative language of this subsection and section 305(b)(2), the Chair once responded to an inquiry that time for debate on an appeal from the ruling of the Chair during consideration of a reconciliation bill was controlled by and evenly divided between the Senator who made the appeal and the majority leader. 128 CONG. REC. S8,702-03, S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by the manager, Senator Packwood, during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2) to reconciliation bills, section 305(b)(2) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the Senator who made the appeal and the manager of the reconciliation bill, except that in the event that the manager favored the appeal, the minority leader or the minority leader's designee would control the time in opposition.

Contrast the more limited debate -- 20 minutes -- allowable for appeals under a waiver resolution pursuant to section 303(c). *See supra* pp. 97-100.

Note that section 271(c) of Gramm-Rudman-Hollings requires the affirmative vote of 60 Senators to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 304(b), 306, 310(d), 310(g), and 311(a). Similarly, in connection with reconciliation, subsections (a) and (b) of the Byrd Rule also require the affirmative vote of 60 Senators to sustain an appeal of a point of order raised under the Byrd Rule or the germaneness requirements of section 305(b)(2). *See infra* pp. 595-597.

EFFECTIVE DATES

SEC. 905. (a) Except as provided in this section, the provisions of this Act shall take effect on the date of its enactment.

(b) Title II[596] (except section 201(a)[597]), section 403,[598] and section 502(c)[599] shall take effect on the day on which the first Director of the Congressional Budget Office is appointed under section 201(a).[600]

(c) Except as provided in section 906,[601] title III[602] and section 402[603] shall apply with respect to

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[596] *See supra* pp. 35-51.

[597] *See supra* pp. 35-37.

[598] *See supra* pp. 235-237.

[599] *See supra* note 566. Public Law 97-258 repealed section 502. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982).

[600] *See supra* pp. 35-37.

[601] *See infra* p. 296.

[602] *See supra* pp. 53-210.

the fiscal year beginning on October 1, 1976, and succeeding fiscal years, and section 401[604] shall take effect on the first day of the second regular session of the Ninety-fourth Congress.[605]

(d) The amendments to the Budget and Accounting Act, 1921, made by sections 601, 603, and 604[606] shall apply with respect to the fiscal year beginning on July 1, 1975, and succeeding fiscal years, except that section 201(g)[607] of such Act (as added by section 601[608]) shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years and section

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[603] (...continued)

[603] *See supra* note 517. Note that this effective date applied to the version of section 402 that section 212 of Gramm-Rudman-Hollings repealed.

[604] *See supra* pp. 211-228.

[605] That is, January 19, 1976.

[606] *See supra* note 568. Public Law 97-258 repealed sections 601-604. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982).

[607] Section 201(g) of the Budget and Accounting Act, 1921, is codified, as amended, in 31 U.S.C. §§ 1105 & 1106.

[608] *See supra* note 568.

201(i)[609] of such Act (as added by section 601[610]) shall apply with respect to the fiscal year beginning on October 1, 1978, and succeeding fiscal years. The amendment to such Act made by section 602[611] shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years.

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[609] Section 201(i) of the Budget and Accounting Act, 1921, is codified in part, as amended, in 31 U.S.C. § 1108.

[610] *See supra* note 568.

[611] *See supra* note 568.

APPLICATION OF CONGRESSIONAL BUDGET PROCESS TO FISCAL YEAR 1976

SEC. 906. **If the Committee on the Budget of the House of Representatives and the Senate both agree that it is feasible to report and act on a concurrent resolution on the budget referred to in section 301(a),[612] or to apply any provision of title III[613] or section 401[614] or 402,[615] for the fiscal year beginning on July 1, 1975, and submit reports of such agreement to their respective Houses, then to the extent and in the manner specified in such reports, the provisions so specified and section 202(f)[616] shall apply with respect to such fiscal year. If any provision so specified contains a date, such reports shall also specify a substitute date.**

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[612] *See supra* pp. 59-63.

[613] *See supra* pp. 53-210.

[614] *See supra* pp. 211-228.

[615] *See supra* pp. 229-234.

[616] *See supra* pp. 44-47.

TITLE X
IMPOUNDMENT CONTROL

PART A
GENERAL PROVISIONS

DISCLAIMER

SEC. 1001. **Nothing contained in this Act, or in any amendments made by this Act, shall be construed as --**

(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;

(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;

(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or

(4) superseding any provision of law which requires the obligation of budget authority[617] or the making of outlays[618] thereunder.[619]

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[617] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[618] Section 3(1) defines "outlays." *See supra* p. 10.

[619] Public Law 97-258 repealed sections 1002 and 1003. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). Section 1002 was codified in section 1512 of title 31. As originally enacted in 1974, sections 1002 and 1003 read as follows:

AMENDMENT TO ANTIDEFICIENCY ACT

SEC. **1002**. Section 3679(c)(2) of the Revised Statutes, as amended (31 U.S.C. 665) is amended to read as follows:

"(2) In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possi-

(continued...)

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[619] (...continued)

ble by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974."

REPEAL OF EXISTING IMPOUNDMENT REPORTING PROVISION

SEC. **1003**. Section 203 of the Budget and Accounting Procedures Act of 1950 is repealed.

PART B
CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

DEFINITIONS

SEC. 1011. For purposes of this part --

(1) "deferral of budget authority"[620] includes --

(A) withholding or delaying the obligation or expenditure of budget authority[621] (whether by establishing

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[620] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[621] Section 3(2) defines "budget authority." *See supra* p. 10-11.

reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority,[622] including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority[623] proposed to be rescinded in a special message transmitted by the President under section 1012,[624] and upon which the Congress completes action before the end of the first period of 45 calendar days[625] of continuous session of the Congress

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[622] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[623] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[624] *See infra* pp. 305-307.

[625] Section 1011(5) defines this 45-day period. *See infra* p. 303.

after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed deferral of budget authority[626] set forth in a special message transmitted by the President under section 1013;[627] and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3)[628] of this section and in section 1012,[629] and the 25-day periods referred to in sections 1016[630] and

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[626] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301. Section 3(2) defines "budget authority." *See supra* p. 10-11.

[627] *See infra* pp. 308-311.

[628] *See supra* p. 302.

[629] *See infra* pp. 305-307.

[630] *See infra* pp. 320-321.

1017(b)(1).[631] If a special message is transmitted under section 1012[632] during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3)[633] of this section and in section 1012[634] (with respect to such message) shall commence on the day after such first day.

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[631] *See infra* pp. 322-323.

[632] *See infra* pp. 305-307.

[633] *See supra* p. 302.

[634] *See infra* pp. 305-307.

RESCISSION OF BUDGET AUTHORITY

SEC. 1012. (a) TRANSMITTAL OF SPECIAL MESSAGE. -- Whenever the President determines that all or part of any budget authority[635] will not be required to carry out the full objective or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying --

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation,

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[635] Section 3(2) defines "budget authority." *See supra* p. 10-11.

and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION. -- Any amount of budget authority[636] proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the

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[636] Section 3(2) defines "budget authority." *See supra* p. 10-11.

prescribed 45-day period,[637] the Congress has completed action on a rescission bill[638] rescinding all or part of the amount proposed to be rescinded or that is to be reserved. Funds made available for obligation under this procedure may not be proposed for rescission again.[639]

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[637] Section 1011(5) defines this 45-day period. *See supra* p. 303.

[638] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[639] Section 207 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Rescission Authority," added the sentence "Funds made available for obligation under this procedure may not be proposed for rescission again." Pub. L. No. 100-119, § 207, 101 Stat. 754, 786 (Sept. 29, 1987).

PROPOSED DEFERRALS OF BUDGET AUTHORITY[640]

SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE. -- Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority[641] provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying --

(1) the amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental

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[640] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301. Section 3(2) defines "budget authority." *See supra* p. 10-11.

[641] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301. Section 3(2) defines "budget authority." *See supra* p. 10-11.

functions involved;

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided. A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message

proposing the deferral is transmitted to the House and the Senate.

(b)[642] CONSISTENCY WITH LEGISLATIVE POLICY. -- Deferrals[643] shall be permissible only --

(1) to provide for contingencies;

(2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(3) as specifically provided by law.

No officer or employee of the United States may defer any budget authority[644] for any other purpose.

(c) EXCEPTION. -- The provisions of this section

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[642] Section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," revised subsection (b) to read as it currently does. Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (Sept. 29, 1987). Compare the similar provisions of 31 U.S.C. § 1512(c)(1).

[643] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

[644] Section 3(2) defines "budget authority." *See supra* p. 10-11.

do not apply to any budget authority[645] proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.[646]

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[645] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[646] *See supra* pp. 305-307.

TRANSMISSION OF MESSAGES; PUBLICATION

SEC. 1014. (a) DELIVERY TO HOUSE AND SENATE. -- Each special message transmitted under section 1012[647] or 1013[648] shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

(b) DELIVERY TO COMPTROLLER GENERAL. -- A copy of each special message transmitted under section 1012[649] or 1013[650] shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in

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[647] *See supra* pp. 305-307.

[648] *See supra* pp. 308-311.

[649] *See supra* pp. 305-307.

[650] *See supra* pp. 308-311.

the exercise of its functions under sections 1012[651] and 1013,[652] the Comptroller General shall review each such message and inform the House of Representatives and the Senate as promptly as practicable with respect to --

(1) in the case of a special message transmitted under section 1012,[653] the facts surrounding the proposed rescission or the reservation of budget authority[654] (including the probable effects thereof); and

(2) in the case of a special message transmitted under section 1013,[655]

(A) the facts surrounding each proposed deferral of budget authority[656] (including the probable effects thereof) and

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[651] *See supra* pp. 305-307.

[652] *See supra* pp. 308-311.

[653] *See supra* pp. 305-307.

[654] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[655] *See supra* pp. 308-311.

[656] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301. Section 3(2) defines "budget authority." *See supra* p. 10-11.

(B) whether or not (or to what extent), in his judgment, such proposed deferral is in accordance with existing statutory authority.

(c) TRANSMISSION OF SUPPLEMENTARY MESSAGES. -- If any information contained in a special message transmitted under section 1012[657] or 1013[658] is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in subsection (a).[659] The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under subsection (b)[660] which may be necessitated by such revision.

(d) PRINTING IN FEDERAL REGISTER. -- Any special message transmitted under section 1012[661] or

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[657] *See supra* pp. 305-307.

[658] *See supra* pp. 308-311.

[659] *See supra* p. 312.

[660] *See supra* pp. 312-314.

[661] *See supra* pp. 305-307.

1013,[662] and any supplementary message transmitted under subsection (c),[663] shall be printed in the first issue of the Feral Register published after such transmittal.

(e) CUMULATIVE REPORTS OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY. --

(1) The President shall submit a report to the House of Representatives and the Senate not later than the 10th day of each month during a fiscal year, listing all budget authority[664] for that fiscal year with respect to which, as of the first day of such month --

(A) he has transmitted a special message under section 1012[665] with respect to a proposed rescission or a reservation; and

(B) he has transmitted a special

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[662] *See supra* pp. 308-311.

[663] *See supra* p. 314.

[664] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[665] *See supra* pp. 305-307.

message under section 1013[666] proposing a deferral.[667]

Such report shall also contain, with respect to each such proposed rescission or deferral,[668] or each such reservation, the information required to be submitted in the special message with respect thereto under section 1012[669] or 1013.[670]

(2) Each report submitted under paragraph (1)[671] shall be printed in the first issue of the Federal Register published after its submission.

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[666] *See supra* pp. 308-311.

[667] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

[668] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

[669] *See supra* pp. 305-307.

[670] *See supra* pp. 308-311.

[671] *See supra* pp. 315-316.

REPORTS BY COMPTROLLER GENERAL

SEC. 1015. (a) FAILURE TO TRANSMIT SPECIAL MESSAGE. -- If the Comptroller General finds that the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any other officer or employee of the United States --

> **(1) is to establish a reserve or proposes to defer budget authority[672] with respect to which the President is required to transmit a special message under section 1012[673] or 1013;[674] or**
>
> **(2) has ordered, permitted, or approved the establishment of such a reserve or a deferral of budget authority;**

and that the President has failed to transmit a

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[672] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301. Section 3(2) defines "budget authority." *See supra* p. 10-11.

[673] *See supra* pp. 305-307.

[674] *See supra* pp. 308-311.

special message with respect to such reserve or deferral, the Comptroller General shall make a report on such reserve or deferral and any available information concerning it to both Houses of Congress. The provisions of this part shall apply with respect to such reserve or deferral in the same manner and with the same effect as if such report of the Comptroller General were a special message transmitted by the President under section 1012[675] or 1013,[676] and, for purposes of this part, such report shall be considered a special message transmitted under section 1012[677] or 1013.[678]

(b) INCORRECT CLASSIFICATION OF SPECIAL MESSAGE. -- If the President has transmitted a special message to both Houses of Congress in accordance with section 1012[679] or 1013,[680] and the Comptroller General believes that the President so transmitted the special message in accordance with one of those sections when the special message should have been transmitted in accordance with the other of those sections, the Comptroller General shall make a report to both Houses of the Congress setting forth his reasons.

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[675] *See supra* pp. 305-307.

[676] *See supra* pp. 308-311.

[677] *See supra* pp. 305-307.

[678] *See supra* pp. 308-311.

[679] *See supra* pp. 305-307.

[680] *See supra* pp. 308-311.

SUITS BY COMPTROLLER GENERAL

Sec. 1016. If, under this title, budget authority[681] is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. The courts shall give precedence to civil actions brought under this section, and to appeals and writs from decisions in such actions, over all other civil actions, appeals, and writs. No civil action shall be brought by the Comptroller General under this section until the

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[681] Section 3(2) defines "budget authority." *See supra* p. 10-11.

expiration of 25 calendar days[682] of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the Speaker of the House of Representatives and the President of the Senate.

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[682] Section 1011(5) defines this 25-day period. *See supra* p. 303.

PROCEDURE IN HOUSE AND SENATE

SEC. 1017. (a) REFERRAL. -- Any rescission bill[683] introduced with respect to a special message or impoundment resolution[684] introduced with respect to a proposed deferral of budget authority[685] shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

(b) DISCHARGE OF COMMITTEE. --

(1) If the committee to which a rescission bill[686] or impoundment resolution[687] has been referred has not reported it at the end of 25

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[683] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[684] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

[685] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301. Section 3(2) defines "budget authority." *See supra* p. 10-11.

[686] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[687] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

calendar days[688] of continuous session of the Congress after its introduction, it is in order to move either to discharge the committee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other rescission bill with respect to the special message or impoundment resolution with respect to the same proposed deferral,[689] as the case may be, which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed deferral,[690] as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to

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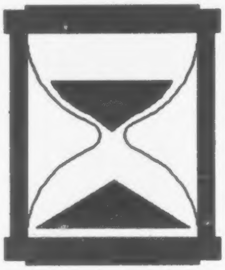
[688] Section 1011(5) defines this 25-day period. *See supra* p. 303.

[689] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

[690] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.



be divided in the House equally between those favoring and those opposing the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order,[691] and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(c) Floor Consideration in the House. --

(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescission bill[692] or impoundment resolution,[693]

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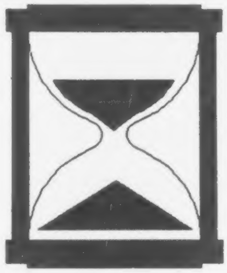
[691] *Cf.* 131 Cong. Rec. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

[692] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[693] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on a rescission bill[694] or impoundment resolution[695] shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of an impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or impoundment resolution is agreed to or disagreed to.



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[694] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[695] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

(3) Motions to postpone, made with respect to the consideration of a rescission bill[696] or impoundment resolution,[697] and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the applications of the Rules of the House of Representatives to the procedure relating to any rescission bill[698] or impoundment resolution[699] shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any rescission bill[700] or impoundment resolution[701] and

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[696] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[697] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

[698] Section 1011(3) defines "rescission bill." *See supra* p. 302.

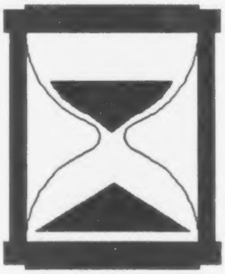
[699] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

[700] Section 1011(3) defines "rescission bill." *See supra* p. 302.

amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

(d) FLOOR CONSIDERATION IN THE SENATE. --

(1) Debate in the Senate on any rescission bill[702] or impoundment resolution,[703] and all amendments thereto (in the case of rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.



(2) Debate in the Senate on any amend-

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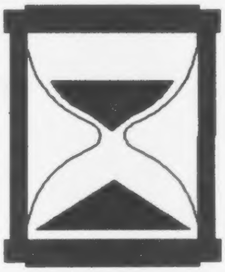
[701](...continued)

[701] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

[702] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[703] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

ment to a rescission bill[704] shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or impoundment resolution[705] shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment[706] that is not germane[707] to the provisions of a rescis-



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[704] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[705] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

[706] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[707] For a discussion of germaneness, see *supra* note 304.

sion bill shall be received.[708] Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. In the case of a rescission bill,[709] a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an impoundment resolution,[710] no

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[708] The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. *See supra* note 305 (regarding that language in section 305(b)(2)).

[709] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[710] Section 1011(4) defines "impoundment resolution." *See supra* p. 303.

amendment or motion to recommit is in order.[711]

(4) The conference report on any rescission bill[712] shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(5) During the consideration of the Senate of the conference report on any rescission bill,[713] debate shall be limited to 2 hours,

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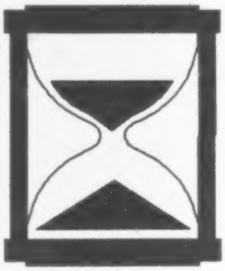
[711] *Cf.* 131 Cong. Rec. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

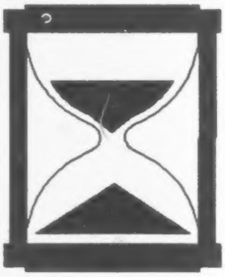
[712] Section 1011(3) defines "rescission bill." *See supra* p. 302.

[713] Section 1011(3) defines "rescission bill." *See supra* p. 302.

to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.



(6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference



report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment[714] that is not germane[715] to the provisions of such amendments shall be received.[716]

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[714] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[715] For a discussion of germaneness, see *supra* note 304.

[716] The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. *See supra* note 305 (regarding that language in section 305(b)(2)).

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

TITLE II
DEFICIT REDUCTION PROCEDURES[717]

SEC. 200. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title. -- This title may be cited as the "Balanced Budget and Emergency Deficit Control Act of 1985".[718]

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[717] The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038 (Dec. 12, 1985), *amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, tit. I-II, 101 Stat. 754 (Sept. 29, 1987), *and further amended* (codified as amended at 2 U.S.C. §§ 901-922).

[718] Title I of Public Law 99-177 does not deal with the budget process. Title I provides:

Joint Resolution

Increasing the statutory limit on the public debt.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the

(continued...)

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[718](...continued)
dollar limitation contained in such subsection and inserting in lieu thereof "$1,847,800,000,000, or $2,078,700,000,000 on and after October 1, 1985,".

SEC. 2. MINIMUM CORPORATE TAX BY CORPORATIONS.

(a) Notwithstanding any other provision of this joint resolution the Senate Committee on Finance is directed to report to the Senate by July 1, 1986, legislation providing for payment of an alternative minimum corporate tax by corporations on the broadest feasible definition of income to assure that all of those with economic income pay their fair share of taxes: *Provided,* That said alternative minimum corporate tax shall take effect for corporate tax years commencing on or after October 1, 1986. The revenue raised by this tax shall be applied to reduce the Federal deficit.

(b) Notwithstanding any other provision of this joint resolution, the Committee on Ways and Means is directed to report to the House of Representatives legislation providing for payment of an alternative minimum corporate tax by corporations based upon the broadest feasible definition of income to assure that all of those with economic income pay their fair share of taxes: *Provided,* That, the Committee on Ways and Means shall report such legislation prior to October 1, 1986.

SEC. 3. ACHILLE LAURO HIJACKING.

(a) The Senate finds that --

(continued...)

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[718](...continued)

(1) the four men identified as the hijackers of the Achille Lauro were responsible for brutally murdering an innocent American citizen, Leon Klinghoffer, and for terrorizing hundreds of innocent crew members and passengers for two days;

(2) the United States urges all countries to aid in the swift apprehension, prosecution, and punishment of the terrorists; and

(3) the United States should not tolerate any country providing safe harbor or safe passage to the terrorists.

(b) It is the sense of the Senate that --

(1) the United States demands that no country provide safe harbor or safe passage to these terrorists;

(2) the United States expects full cooperation of all countries in the apprehension, prosecution, and punishment of these terrorists;

(3) the United States cannot condone the release of terrorists or the making of concessions to terrorists; and

(4) the United States identify those individuals responsible for the seizure of the Achille Lauro and the cold-blooded murder of Leon Klinghoffer, as well as those countries and groups that aid and abet such terrorist activities,

(continued...)

(b) TABLE OF CONTENTS. --

Sec. 200. Short title and table of contents.

PART A -- CONGRESSIONAL BUDGET PROCESS

Subpart I -- Congressional Budget

Sec. 201. Congressional budget.

Subpart II -- Amendments to Title IV of the Congressional Budget Act of 1974

Sec. 211. New spending authority.
Sec. 212. Credit authority.
Sec. 213. Description by Congressional Budget Office.
Sec. 214. General Accounting Office study; off-budget agencies; member user group

Subpart III -- Additional Provisions to Improve Budget Procedures

Sec. 221. Congressional Budget Office.
Sec. 222. Current services budget for congressional budget purposes.
Sec. 223. Study of off-budget agencies.
Sec. 224. Changes in functional categories.
Sec. 225. Jurisdiction of Committee on Government Operations.
Sec. 226. Continuing study of congressional budget process.
Sec. 227. Early election of committees of the House.
Sec. 228. Rescissions and transfers in appropriation bills.

Subpart IV -- Technical and Conforming Amendments

Sec. 231. Table of contents.
Sec. 232. Additional technical and conforming amendments.

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[718] (...continued)
and take the strongest measures to ensure that those responsible for this brutal act against an American citizen are brought to justice.

PART B -- BUDGET SUBMITTED BY THE PRESIDENT

Sec. 241. Submission of President's budget; maximum deficit amount may not be exceeded.
Sec. 242. Supplemental budget estimates and changes.

PART C -- EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

Sec. 251. Reporting of excess deficits.
Sec. 252. Presidential order.
Sec. 253. Compliance report by Comptroller General.
Sec. 254. Congressional action.
Sec. 255. Exempt programs and activities.
Sec. 256. Exceptions, limitations, and special rules.
Sec. 257. Definitions.

PART D -- BUDGETARY TREATMENT OF SOCIAL SECURITY TRUST FUNDS

Sec. 261. Treatment of trust funds.

PART E -- MISCELLANEOUS AND RELATED PROVISIONS

Sec. 271. Waivers and suspensions; rulemaking powers.
Sec. 272. Restoration of trust fund investments.
Sec. 273. Revenue estimates.
Sec. 274. Judicial review.
Sec. 275. Effective dates.

PART A
CONGRESSIONAL BUDGET PROCESS

Subpart I
Congressional Budget

SEC. 201. CONGRESSIONAL BUDGET.

(a) DEFINITIONS. --

(1) Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new paragraphs:

". . . ."[719]

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[719] Section 201(a)(1) added sections 3(6) through 3(10) of the Congressional Budget Act. *See supra* pp. 13-24.

(2) Paragraph (2)[720] of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting before the comma the following: "or to collect offsetting receipts.".

(b) CONGRESSIONAL BUDGET PROCESS. -- Title III of the Congressional Budget Act of 1974 is amended to read as follows:

". . . ."[721]

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[720] *See supra* p. 10.

[721] *See supra* pp. 53-210.

Subpart II
Amendments to Title IV of the Congressional Budget Act of 1974

SEC. 211. NEW SPENDING AUTHORITY.

Section 401 of the Congressional Budget Act of 1974 is amended to read as follows:

". . . ."[722]

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[722] *See supra* pp. 211-228.

SEC. 212. CREDIT AUTHORITY.

Section 402 of the Congressional Budget Act of 1974 is amended to read as follows:

". . . ."[723]

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[723] *See supra* pp. 229-234.

SEC. 213. DESCRIPTION BY CONGRESSIONAL BUDGET OFFICE.

(a) CONGRESSIONAL BUDGET OFFICE ANALYSIS. -- Section 403(a) of the Congressional Budget Act of 1974 is amended by striking out "and" at the end of paragraph (2), by striking out the period and inserting "; and" at the end of paragraph (3), and by inserting at the end thereof the following new paragraph:

> "(4) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.".

(b) CONFORMING AMENDMENT. -- The second sentence of section 403(a) of such Act is amended by striking out "estimates and comparison" and inserting in lieu thereof "estimates, comparison, and description".

SEC. 214. GENERAL ACCOUNTING OFFICE STUDY; OFF-BUDGET AGENCIES; MEMBER USER GROUP.

Title IV of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new sections:

". . . ."[724]

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[724] Section 214 added sections 405 through 407 of the Congressional Budget Act. *See supra* pp. 242-245.

Subpart III
Additional Provisions to Improve Budget Procedures

SEC. 221. CONGRESSIONAL BUDGET OFFICE.

(a) Reporting Date. -- Section 202(f)(1) of the Congressional Budget Act of 1974 is amended by striking out "April 1" in the first sentence and inserting in lieu thereof "February 15".

(b) Additional Reporting Requirement. -- Section 202(f) of such Act is further amended by adding at the end thereof the following new paragraph:

> "(3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing
>
> > "(A) all programs and activities funded during the fiscal year ending September 30 of that calendar year

for which authorizations for appropriations have not been enacted for that fiscal year, and

"(B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.".

(c) STUDIES. -- Section 202 of such Act is further amended by adding at the end thereof the following new subsection:

"(h) STUDIES. -- The Director shall conduct continuing studies to enhance comparisons of budget outlays,[725] credit authority,[726] and tax expenditures.".[727]

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[725] Section 3(1) defines "budget outlays." *See supra* p. 10.

[726] Section 3(10) defines "credit authority." *See supra* p. 24.

[727] Section 3(3) defines "tax expenditures." *See supra* p. 11.

SEC. 222. CURRENT SERVICES BUDGET FOR CONGRESSIONAL BUDGET PURPOSES.

(a) Current Services Budget. -- The first sentence of section 1109(a) of title 31, United States Code, is amended by striking out "Before November 11 of each year" and inserting in lieu thereof "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)".

(b) Joint Economic Committee Review. -- Section 1109(b) of title 31, United States Code, is amended by striking out "January 1" and inserting in lieu thereof "March 1".

SEC. 223. STUDY OF OFF-BUDGET AGENCIES.

Section 606[728] of the Congressional Budget Act of 1974 is repealed.

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[728] *See supra* note 568.

SEC. 224. CHANGES IN FUNCTIONAL CATEGORIES.

Section 1104(c) of title 31, United States Code, is amended by adding at the end thereof the following new sentence: "Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.".

SEC. 225. JURISDICTION OF COMMITTEE ON GOVERNMENT OPERATIONS.

Clause 1(j) of Rule X of the Rules of the House of Representatives is amended by inserting after item (5) the following new item:

> "(6) Measures providing for off-budget treatment of Federal agencies or programs.".

SEC. 226. CONTINUING STUDY OF CONGRESSIONAL BUDGET PROCESS.

Clause 3 of Rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following:

> **"(i) The Committee on Rules shall have the function of reviewing and studying, on a continuing basis, the congressional budget process, and the committee shall, from time to time, report its findings and recommendations to the House.".**

SEC. 227. EARLY ELECTION OF COMMITTEES OF THE HOUSE.

Clause 6(a)(1) of Rule X of the Rules of the House of Representatives is amended by striking out "at" and inserting in lieu thereof "within the seventh calendar day beginning after", and by adding at the end thereof the following new sentence: "It shall always be in order to consider resolutions recommended by the respective party caucuses to change the composition of standing committees.".

SEC. 228. RESCISSIONS AND TRANSFERS IN APPROPRIATION BILLS.

(a) Rescissions. -- Clause 2(b) of Rule XXI of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and except rescissions of appropriations contained in appropriation Acts".[729]

(b) Transfers. -- Clause 6 of Rule XXI of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and shall not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated, reported by the Committee on Appropriations".

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[729] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

Subpart IV Technical and Conforming Amendments

SEC. 231. TABLE OF CONTENTS.

The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 with respect to title III is amended to read as follows:

". . . ."[730]

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[730] *See supra* pp. 4-5.

SEC. 232. ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS. -- The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended --

(1) by striking out the item relating to section 402 and inserting in lieu thereof the following new item:

"Sec. 402. Legislation providing new credit authority.";

(2) by inserting after the item relating to section 404 the following new items:

"Sec. 405. Study by the General Accounting Office of forms of Federal financial commitment that are not reviewed annually by Congress.
"Sec. 406. Off-budget agencies, programs, and activities.
"Sec. 407. Member user group."; **and**

(3) by striking out the item relating to section 606.

(b) TECHNICAL AMENDMENT. -- Paragraph (4) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended --

(1) by adding "and" after the semicolon at the end of subparagraph (A);

(2) by striking out subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) TECHNICAL AMENDMENT. -- Subparagraph (2) of clause 4(b) of rule X of the Rules of the House of Representatives is amended by striking out "first concurrent resolution" and inserting in lieu thereof "concurrent resolutions".

(d) TECHNICAL AMENDMENT. -- Clause 4(g) of rule X of the Rules of the House of Representatives is amended by striking out "March 15" and inserting in lieu thereof "February 25".

(e) TECHNICAL AMENDMENT. -- Clause 2(l)(1) of rule XI of the Rules of the House of Representatives is amended --

(1) by striking out "(except as provided in subdivision (C))" in subparagraph (A) thereof; and

(2) by repealing subparagraph (C) thereof.

(f) Technical Amendment. -- Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is amended by inserting "(1)" after "section 308(a)", and by striking out "new budget authority[731] or new or increased tax expenditures"[732] and inserting in lieu thereof "new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2)[733] of such Act, new credit authority,[734] or an increase or decrease in revenues or tax expenditures".

(g) Technical Amendment. -- Rule XLIX of the Rules of the House of Representatives is amended by striking out ", 304, or 310" in clause 1 and inserting in lieu thereof "or 304".

(h) Technical Amendment. -- Clause 1(e)(2) of Rule X of the Rules of the House of Representatives is amended by inserting before the period at

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[731] Section 3(2) defines "budget authority." *See supra* p. 10-11.

[732] Section 3(3) defines "tax expenditures." *See supra* p. 11.

[733] *See supra* pp. 216-221.

[734] Section 402(b) of the Congressional Budget Act defines "*new* credit authority" (*see supra* p. 233), in part by reference to the definition of "credit authority" in section 3(10) of that Act (*see supra* p. 24).

the end thereof the following: ", and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

PART B
BUDGET SUBMITTED BY THE PRESIDENT

SEC. 241. SUBMISSION OF PRESIDENT'S BUDGET; MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.

(a) SUBMISSION OF PRESIDENT'S BUDGET. -- The first sentence of section 1105(a) of title 31, United States Code, is amended by striking out "During the first 15 days of each regular session of Congress" and inserting in lieu thereof the following: "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)".

(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. -- Section 1105 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

> "(f)(1) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared on the basis of the best

estimates then available, in such a manner as to ensure that the deficit[735] for such fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7)[736] of section 3 of the Congressional Budget and Impoundment Control Act of 1974.

"(2) The deficit set forth in the budget so transmitted for any fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7)[737] of section 3 of the Congressional Budget and Impoundment Control Act of 1974, with budget outlays[738] and Federal revenues at such levels as the President may consider most desirable and feasible.

"(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.".

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[735] Section 3(6) of the Congressional Budget Act defines "deficit." *See supra* pp. 13-20.

[736] *See supra* pp. 20-22.

[737] *See supra* pp. 20-22.

[738] Section 3(1) of the Congressional Budget Act defines "budget outlays." *See supra* p. 10.

SEC. 242. SUPPLEMENTAL BUDGET ESTIMATES AND CHANGES.

(a) CHANGE IN DATE OF SUBMISSION. -- The first sentence of section 1106(b) of title 31, United States Code, is amended by striking out "April 11 and".

(b) REVISIONS AND SUPPLEMENTAL SUMMARIES. -- Section 1106 of title 31 of such Code is further amended by adding at the end thereof the following new subsection:

> "(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.".

PART C
EMERGENCY POWERS TO ELIMINATE DEFICITS[739] IN EXCESS OF MAXIMUM DEFICIT AMOUNT[740]

SEC. 251. REPORTING OF EXCESS DEFICITS[741]

(a) Initial Estimates, Determinations, and Reports by OMB and CBO. --

(1) Estimates and determinations. -- The Director of the Office of Management and Budget and the Director of the Congressional

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[739] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[740] Section 257(5) (*see infra* p. 520) defines "maximum deficit amount" by adopting the definition of section 3(7) of the Congressional Budget Act. *See supra* pp. 20-22.

[741] Section 251(a)(1)(B) impliedly defines "deficit excess." *See infra* p. 368 & note 745.

Budget Office (in this part referred to as the "Directors") shall with respect to each fiscal year and in accordance with the requirements, specifications, definitions, and calculations required by this part --

(A) estimate the budget levels of total revenues and outlays[742] that may be anticipated for such fiscal year as of August 15 of the calendar year in which such fiscal year begins (or as of October 10, 1987, in the case of fiscal year 1988),

(B) determine whether the projected deficit[743] for such fiscal year will exceed the maximum deficit amount[744] for such fiscal year and whether such deficit excess[745] will be greater than

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[742] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[743] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[744] Section 257(5) (*see infra* p. 520) defines "maximum deficit amount" by adopting the definition of section 3(7) of the Congressional Budget Act. *See supra* pp. 20-22.

[745] Section 251(a)(1)(B) thus impliedly defines "deficit excess" as the amount by which the projected deficit for a fis-

(continued...)

$10,000,000,000 (zero in the case of fiscal year 1993),

(C) estimate the amount of net deficit reduction in the budget baseline[746] that has occurred since January 1 of the calendar year in which such fiscal year begins, and

(D) estimate the rate of real economic growth that will occur during such fiscal year, the rate of real economic growth that will occur during each quarter of such fiscal year, and the rate of real economic growth that will have occurred during each of the last two quarters of the preceding fiscal year.

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[745](...continued)
cal year will exceed the maximum deficit amount for that fiscal year.

[746] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See infra* pp. 391-400.

(2) Reports. -- (A) Based on the estimates and determinations required in paragraph (1) and in accordance with the requirements, specifications, definitions, and calculations required by this part, the Director of the Congressional Budget Office (in this part referred to as the "Director of CBO") shall issue a report to the Director of the Office of Management and Budget (in this part referred to as the "Director of OMB") and to the Congress on August 20 of the calendar year in which the fiscal year begins (or on October 15, 1987, in the case of fiscal year 1988) estimating the budget baseline[747] levels of total revenues and total outlays[748] for such fiscal year, identifying the amount of any deficit[749] excess[750] for such fiscal year, stating whether such excess is greater than

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[747] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See infra* pp. 391-400.

[748] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[749] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[750] Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

$10,000,000,000 (zero in the case of fiscal year 1993), estimating the amount of net deficit reduction in the budget baseline that has occurred since January 1 of the calendar year in which such fiscal year begins, specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative real economic growth, estimating the aggregate amount of required outlay[751] reductions, and specifying, by account for non-defense programs and by account for defense programs the budget baseline from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year in order to make the reductions required by this part.

(B) The Director of OMB shall issue a report to the President and the Congress on August 25 of the calendar year in which the fiscal year begins (or on October 20, 1987, in the case of the fiscal year 1988) containing the same information required in subpara-

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[751] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

graph (A) and the information required in clauses (i) and (ii) for such fiscal year as follows:

(i) The Director of OMB shall identify and explain any differences between the amount set forth in such report and the corresponding amount set forth in the report of the Director of CBO under subparagraph (A) with respect to --

(I) the aggregate amount of required outlay[752] reductions;

(II) the aggregate amount of resources to be sequestered from defense accounts (by type of sequesterable resource) and from non-defense accounts (by type of sequesterable resource); and

(III) the amount of sequesterable resources for any budget account that is to be reduced if such difference is greater than $5,000,000.

(ii) The Director of OMB shall

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[752] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

calculate and set forth for defense programs (by type of sequesterable resource) and for non-defense programs (by type of sequesterable resource), the amount of reductions in budgetary resources that would be required by this part using his estimate of the aggregate amount of required outlay[753] reductions and applying the technical assumptions (including outlay rates) and methodologies used in the report of the Director of CBO under subparagraph (A). The Director of OMB shall identify and explain any differences between these estimates and such corresponding amounts set forth under clause (i).

(iii) In the report for a fiscal year (except fiscal year 1988) issued under this subparagraph, the Director of OMB shall assume that the aggregate outlay rate for defense programs covered by paragraph (6)(C), calculated using data on sequesterable resources and account outlay rates applicable to such fiscal year, shall not differ by more than one-half of 1 percent from such aggregate

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[753] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

outlay rate calculated using the same data on sequesterable resources but using account outlay rates calculated arithmetically using the applicable sequesterable resources and outlays[754] contained in the report submitted under this Act for the preceding fiscal year as proposed by the Director of OMB. For purposes of this subparagraph, an aggregate outlay rate shall be the average of account outlay rates (expressed as a percentage) with each account outlay rate (as defined in section 257(13)) given a weight that is proportional to the account's share of total sequesterable resources. The calculation of the non-defense aggregate outlay rate for programs covered by paragraph (6)(C), shall be determined using the procedures and restrictions used for determining the aggregate defense outlay rate.

(iv) The report issued under this subparagraph for any fiscal year (except fiscal year 1988) may not assume aggre-

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[754] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

gate outlays[755] for the health insurance programs under title XVIII[756] of the Social Security Act (before taking into account legislation enacted or regulations prescribed after the current services budget is submitted) which deviate by more than 1 percent from the amount of outlays[757] estimated for such programs in the current services budget submitted by the President pursuant to section 1109(a) of title 31, United States Code, for such fiscal year. For fiscal year 1988 the report issued under this subparagraph shall assume aggregate outlays for such programs (before taking into account legislation enacted or regulations promulgated as final after August 20, 1987) equal to the amount assumed for such programs by the Director of OMB in the report submitted to the Temporary Joint Committee on Deficit Reduction on August 20, 1987, except that, unless

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[755] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[756] 42 U.S.C. §§ 1395-1395ccc.

[757] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

necessary to comply with requirements provided in law, any change in administrative procedures that increases or decreases the average number of days for the payment of claims under title XVIII[758] of the Social Security Act, compared to such average in the preceding fiscal year, shall not be taken into account for purposes of this Act.

(C)(i) The technical and economic assumptions used by the Director of CBO to calculate the excess deficit[759] shall also be used by the Director of CBO to calculate the unachieved deficit reduction, required outlay[760] reductions and the amounts and percentages by which budgetary resources must be reduced.

(ii) The technical and economic assump-

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[758] 42 U.S.C. §§ 1395-1395ccc.

[759] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

[760] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

tions used by the Director of OMB to calculate the excess deficit[761] shall also be used by the Director of OMB to calculate the required outlay[762] reductions, the unachieved deficit reduction and the amounts and percentages by which budgetary resources must be reduced.

(iii) For fiscal year 1988, except as specified in subparagraph (B)(iv), the Director of OMB shall use the same economic and technical assumptions (including outlay rates) that the Director of OMB used in the report submitted to the Temporary Joint Committee on Deficit Reduction on August 20, 1987.

(iv) For fiscal year 1989 and subsequent fiscal years, to the extent that the report submitted by the President for such fiscal year under section 1106(a) of title 31, United States Code, uses economic and technical

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[761] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

[762] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

assumptions (including outlay rates) that differ from those that will be used by the Director of OMB in the report to be submitted under subparagraph (B) for such fiscal year, the report submitted by the President shall explain and identify such differences. Such report shall provide an estimate of the deficit[763] excess[764] and net deficit reduction in the budget baseline[765] consistent with the estimates that will be used by the Director of OMB in the report to be submitted under subparagraph (B) for such fiscal year. The report submitted by the Director of OMB under subparagraph (B) for such fiscal year shall use the economic and technical assumptions that the report submitted by the President indicated would be used by such Director.

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[763] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[764] Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

[765] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See infra* pp. 391-400.

(3) DETERMINATION OF REDUCTIONS. --

(A) The aggregate amount of required outlay[766] reductions for a fiscal year shall be determined as follows:

(i) The aggregate required outlay[767] reductions shall be --

(I) for fiscal year 1988, the amount of unachieved deficit[768] reduction;

(II) for fiscal year 1989, zero if the deficit excess[769] is equal to or less than $10,000,000,000, or if not, the lesser of the deficit excess or

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[766] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[767] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[768] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[769] Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

the amount of unachieved deficit reduction; or

(III) for fiscal year 1990, 1991, 1992, or 1993, zero if the deficit excess[770] for such fiscal year is equal to or less than the amount of the margin for such fiscal year specified in paragraph (10) of section 257, or if not, the amount of the deficit excess for such fiscal year.

The unachieved deficit reduction shall be $23,000,000,000 in the case of fiscal year 1988 and $36,000,000,000 in the case of fiscal year 1989, minus the net deficit reduction in the budget baseline[771] for such fiscal year, but such unachieved deficit reduction shall not exceed $23,000,000,000 in the case of fiscal year 1988 or $36,000,000,000 in the case of fiscal year 1989. Net deficit reduction in

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[770] Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

[771] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See infra* pp. 391-400.

the budget baseline for a fiscal year shall be the amount of the estimated deficit for such fiscal year based on laws enacted by, and regulations promulgated as final by, the snapshot date, as measured using the budget baseline specified in paragraph (6),[772] subtracted from the amount of the estimated deficit for such fiscal year based on laws enacted by, and regulations promulgated as final by, January 1 of the calendar year in which such fiscal year begins as measured by using the budget baseline specified in paragraph (6).[773] Both such deficit estimates for a fiscal year shall be made using the same economic and technical assumptions.

(ii) As used in this paragraph, the term "snapshot date" means --

(I) for fiscal year 1988, in the case of an initial report submitted under subsection (a), October 10, 1987, and in the

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[772] *See infra* pp. 391-400.

[773] *See infra* pp. 391-400.

case of a final report submitted under subsection (c), the latest possible date before its submission;

(II) for fiscal year 1989 and subsequent fiscal years, in the case of an initial report submitted under subsection (a), August 15, and in the case of a final report submitted under subsection (c), the latest possible date before its submission.

(B) Subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in this section and in sections 255, 256, and 257, one-half of the aggregate required outlay[774] reductions shall be made under accounts within major functional category 050 (in this part referred to as outlays under "defense programs"), and shall be made in accordance with the rules prescribed in subsection (d), and the other half of the aggregate required outlay reductions shall be made under other accounts of

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[774] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

the Federal Government (in this part referred to as "non-defense programs").

(C) The amount by which outlays[775] for automatic spending increases scheduled to take effect during the fiscal year are to be reduced shall be credited as reductions in outlays under non-defense programs, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced accordingly.

(D) The maximum reduction permissible for each program to which an exception, limitation, or special rule set forth in subsection (c) or (f) of section 256 applies shall be credited as reductions in outlays[776] under non-defense programs, and the amount of reductions in outlays under non-defense programs shall be further reduced by the amount of the reduction determined with respect to each such program.

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[775] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[776] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

(E)(i) Sequestrations and reductions under the remaining non-defense programs shall be applied on a uniform percentage basis so as to reduce new budget authority;[777] new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; obligation limitations; and spending authority as defined in section 401(c)(2)[778] of the Congressional Budget Act of 1974 to the extent necessary to achieve any remaining required outlay[779] reductions; except that each of the programs to which the special rules set forth in subsections (d)[780] and (k)[781] of section 256 apply shall not be reduced by more

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[777] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[778] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

[779] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[780] *See infra* pp. 499-502.

[781] *See infra* pp. 516-517.

than the percentages specified in such subsections and the uniform percentage reduction applicable to all other programs under this clause shall be increased (if necessary) to a level sufficient to achieve any remaining required outlay reductions.

(ii) For purposes of determining reductions under clause (i), any reduction in outlays[782] **of the Commodity Credit Corporation under an order issued by the President under section 252 for a fiscal year, with respect to contracts entered into during that fiscal year, that will occur during the succeeding fiscal year, shall be credited as reductions in outlays for the fiscal year in which the order is issued.**

The determination of which accounts are within major functional category 050 and which are not, for purposes of subparagraph (B), shall be made by the Directors in a manner consistent with the budget submitted by the President for the fiscal year 1986; except that for such purposes no part of the

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[782] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

accounts entitled "Federal Emergency Management Agency, Salaries and expenses (58-0100-0-1-999)" and "Federal Emergency Management Agency, Emergency management planning and assistance (58-0101-0-1-999)" shall be treated as being within functional category 050.

(4) ADDITIONAL SPECIFICATIONS. -- The reports submitted under paragraph (2) must also specify (with respect to the fiscal year involved) --

(A) the amount and percentage increase of the automatic spending increase (if any) which is scheduled to take effect in the case of each program providing for such increases, and the amount and percentage increase (if any) of each such increase which will take effect after reduction under this part;

(B) the amount of the savings (if any) to be achieved in the application of each of the special rules set forth in subsections (c) through (l) of section 256, along with a statement of

(i) the new Federal matching rate resulting from the application of subsection (e) of that section, and

(ii) the amount of the percentage reduction in payments to the States under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(C)(i) for defense programs, by account, the reduction (stated in terms of both percentage and amount) in new budget authority[783] and unobligated balances, together with the estimated outlay[784] reductions resulting therefrom; and

(ii) for non-defense programs, by account, the reduction, stated in terms of both percentage and amount, in new budget authority;[785] new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; obligation limitations; and spending authority as defined in section 401(c)(2)[786] of the Congressional Budget

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[783] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[784] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[785] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[786] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

Act of 1974; together with the estimated outlay[787] reductions resulting therefrom.

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[787] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

(5) BASIS FOR DIRECTORS' ESTIMATES, DETERMINATIONS, AND SPECIFICATIONS. -- The estimates, determinations, and specifications of the Directors under the preceding provisions of this subsection and under subsection (c) shall utilize the budget baseline, criteria, and guidelines set forth in paragraph (6)[788] and in sections 255, 256, and 257. In estimating the deficit,[789] the excess deficit,[790] and unachieved deficit reduction for an initial report under paragraph (2) or a final report under subsection (c), the Directors shall use the budget baseline set forth in paragraph (6)[791] based on laws enacted by, and regulations promulgated as final by, the snapshot date applicable to such report.

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[788] *See infra* pp. 391-400.

[789] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[790] Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

[791] *See infra* pp. 391-400.

(6) BUDGET BASELINE. -- In estimating the deficit[792] excess[793] and net deficit reduction in the budget baseline and in computing the amounts and percentages by which accounts must be reduced during a fiscal year as set forth in any report required under this subsection for such fiscal year, the budget baseline shall be determined by --

(A) assuming (subject to subparagraph (B)) the continuation of current revenue law and, in the case of spending authority as defined in section 401(c)(2)[794] of the Congressional Budget Act of 1974, funding for current law at levels sufficient to fully make all payments required under such law;

(B) assuming that expiring provisions of law providing revenues and

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[792] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[793] Section 251(a)(1)(B) impliedly defines "deficit excess." *See supra* p. 368 & note 745.

[794] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

spending authority as defined in section 401(c)(2)[795] of the Congressional Budget Act of 1974 do expire, except that excise taxes dedicated to a trust fund, and agricultural price support programs administered through the Commodity Credit Corporation are extended at current rates, contract authority for transportation trust funds is extended at current levels, and that authority to provide insurance through the Federal Housing Administration Fund is continued;[796]

(C) in the case of all accounts to which subparagraph (A) does not apply --

(i) assuming for an account (except as provided by clause (ii)), appropriations at the level specified

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[795] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

[796] Section 8003(f) of the Omnibus Budget Reconciliation Act of 1987 added the words ", and that authority to provide insurance through the Federal Housing Administration Fund is continued." Pub. L. No. 100-203, § 8003(f), 101 Stat. 1330, 1330-282 (Dec. 22, 1987).

in enacted annual appropriations or continuing appropriations enacted for the entire fiscal year, and in addition, estimates of appropriations to cover the costs of Federal pay adjustments as set forth in subparagraph (D)(ii) (unless funding for such pay adjustments are provided for in such measure as explained in the joint explanatory statement of managers accompanying such appropriations);

(ii) assuming, if no annual appropriations or continuing appropriations for the entire fiscal year have been enacted for an account, subject to subparagraph (D)(iii), appropriations at the level provided for the previous fiscal year,

(I) adjusted to reflect the full 12-month costs (without absorption) of the pay adjustment that occurred in such fiscal year,

(II) inflated as specified in subparagraph (D)(i), and

(III) increased to cover the increased costs to agencies of personnel benefits (other than pay) required by law;

(D)(i) as required by subparagraph (C)(ii)(II), assuming that the inflator shall equal --

(I) in the case of fiscal year 1988 --

(aa) for personnel costs, the rate of Federal pay adjustments for statutory pay systems and elements of military pay if such adjustments have been enacted into law or (on or after October 1 of the fiscal year) have been established pursuant to law for such fiscal year or, if not, 4.2 percent, multiplied by the proportion of the fiscal year for which the pay adjustments will be effective, multiplied by 78 percent; and

(bb) for all other costs, 4.2 percent;

(II) in the case of fiscal year 1989 and subsequent fiscal years --

(aa) for 70 percent of personnel costs, the rate of Federal pay adjustments for statutory pay systems and elements of military pay if such adjustments have been enacted into law or (on or after October 1 of the fiscal year) have been established pursuant to law for such fiscal year or, if not, at the inflation rate specified in subclause (II)(bb), multiplied by the proportion of the fiscal year for which the pay adjustments will be effective, multiplied by 78 percent; and

(bb) for all other costs, the percentage by which the average of the estimated gross national product implicit price deflator for such fiscal year exceeds the average of such estimated deflator for the prior fiscal year (and the Director of OMB shall use such percentage as estimated in the budget submitted

by the President under section 1105(a) for such fiscal year, but such use shall not constrain the economic assumptions the Director may use under paragraph (2)(C));

(ii) if required by subparagraph (C)(i), assuming appropriations for a fiscal year in an amount sufficient to --

(I) cover any Federal pay adjustment for statutory pay systems (including associated adjustments in benefit costs) if such adjustments have been enacted into law or, on or after October 1 of the fiscal year, have been established pursuant to law for such fiscal year;

(II) cover any pay adjustments for elements of military pay (including associated adjustments in benefit costs) if such adjustments are specifically enacted into law or occur pursuant to adjustments for statutory pay systems if such

adjustments have been enacted into law or, on or after October 1 of the fiscal year, have been established pursuant to law;

reduced by 22 percent;

(iii) assuming for the purposes of subparagraph (C)(ii) that the amount provided for an account for the previous fiscal year is the amount provided in any enacted annual appropriations or continuing appropriations enacted for the entire fiscal year, as modified by any enacted supplemental appropriations or rescission bills, and if a temporary continuing appropriation is in effect for the previous fiscal year, then the amount provided for such account for the previous fiscal year shall be assumed to be the amount that would have been enacted if such continuing appropriations were in effect for the entire fiscal year;

(E) assuming that medicare spending levels for inpatient hospital services will be based upon the regulations most

recently issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act;

(F) assuming that, unless otherwise required by law, advance deficiency payments and paid land diversion payments under the Agricultural Act of 1949 will be made in accordance with applicable regulations and payment rates for 1987;

(G) assuming that the increase in revenues attributable to any increase in appropriations available for administration and enforcement of the Internal Revenue Code of 1986 (over the amount actually appropriated for the previous fiscal year) is consistent on a proportional basis with the increase in revenues projected to result from the increased appropriations for such purposes in the budget submitted under section 1105(a) of title 31, United States Code, for such fiscal year;

(H) assuming, unless otherwise provided by law, that the increase for Veter-

ans' compensation (36-0153-0-1-701) for a fiscal year will be the same as that required by law for Veterans' pensions;

(I) assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that the sale of an asset or prepayment of a loan shall not alter the deficit[797] or produce any net deficit reduction in the budget baseline, except that the budget baseline estimate shall include asset sales mandated by law before September 18, 1987, and routine, ongoing asset sales and loan prepayments at levels consistent with agency operations in fiscal year 1986;

(J) assuming that deferrals[798] proposed during the period beginning October 1 of such fiscal year and ending with the snapshot date for such fiscal year shall not be taken into account in determining such budget baseline; and

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[797] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[798] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

(K) assuming that the transfer of Government actions from one fiscal year to another fiscal year, as described in section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, shall not be taken into account except to the extent provided in such section.

Terms used in this paragraph shall have the meanings defined in sections 256 and 257.

(b) DATES FOR SUBMISSION AND PRINTING OF REPORTS. -- Each report submitted under this section shall be submitted to the Federal Register on the day that it is issued and printed on the following day. If the date specified for the submission of a report by the Directors or its printing in the Federal Register under this section falls on a Sunday or legal holiday, such report shall be submitted or printed on the following day.

(c) REVISED ESTIMATES, DETERMINATIONS, AND REPORTS. --

(1) REPORTS BY CBO. -- On November 15 of fiscal year 1988 and on October 10 of subsequent fiscal years, the Director of CBO shall issue a revised report to Congress and the Director of OMB --

(A) indicating whether and to what extent, as a result of laws enacted and regulations promulgated as final after August 15 of the calendar year in which the fiscal year begins (or after October 10, 1987, in the case of the fiscal year 1988) the aggregate amount of required outlay[799] reductions identified in the report submitted under subsection (a)(2)(A) has been eliminated, reduced, or increased,

(B) adjusting the determinations made under subsection (a)(2)(A) to the extent necessary, and

(C) specifying by programs, projects,

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[799] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

and activities for defense accounts, the budget baseline[800] from which reductions are taken and the amounts and percentages by which such programs, projects, and activities must be reduced.

(2) Reports by omb. -- On November 20 of fiscal year 1988 and on October 15 of subsequent fiscal years, the Director of OMB shall submit to the President and the Congress a report revising the report issued under subsection (a)(2)(B), adjusting the estimates, determinations, and specifications contained in the report and taking into account for the purposes of required determinations and comparisons the revised report issued by the Director of CBO under paragraph (1). This report shall contain all of the determinations and comparisons required in, and shall be based on the same economic and technical assumptions, employ the same methodologies, and utilize the same definition of the budget baseline[801] and the same criteria and guidelines as, the report issued under subsection (a)(2)(B), and shall provide for the

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[800] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See supra* pp. 391-400.

[801] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See supra* pp. 391-400.

determination of reductions in the manner specified in subsection (a)(3). In addition, this report shall specify by programs, projects, and activities for defense accounts, the budget baseline from which reductions are taken and the amounts by which such programs, projects, and activities must be reduced.

(d) SEQUESTRATION OF DEFENSE PROGRAMS. --

(1) DETERMINATION OF UNIFORM PERCENTAGE. -- The total amount of reductions in outlays[802] under defense programs required for a fiscal year under subsection (a)(3)(B) shall be calculated as a percentage of the total amount of outlays for the fiscal year estimated to result from new budget authority[803] and unobligated balances for defense programs.

(2) SEQUESTRATION OF NEW BUDGET AUTHORITY AND UNOBLIGATED BALANCES. --

(A) Sequestration to achieve the required reduction in outlays[804] under defense programs shall be made by

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[802] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[803] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[804] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

reducing new budget authority[805] and unobligated balances (if any) in each program, project, or activity under accounts within defense programs by the percentage determined under paragraph (1), computed on the basis of the combined outlay rate for new budget authority and unobligated balances for such program, project, or activity determined under subparagraph (B).

(B) If the outlay rate for unobligated balances is not available for any program, project, or activity, the outlay rate used shall be the outlay rate for new budget authority.[806]

(3) FLEXIBILITY WITH RESPECT TO MILITARY PERSONNEL ACCOUNTS. --

(A) Notwithstanding paragraphs (1) and (2), with respect to a fiscal year the President may, with respect to any military personnel account --

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[805] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[806] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

(i) exempt any program, project, or activity within such account from the order;

(ii) provide for a lower uniform percentage to be applied to reduce any program, project, or activity within such account than would otherwise apply; or

(iii) take actions described in both clauses (i) and (ii).

(B) If the President uses the authority under subparagraph (A), the total amount by which outlays[807] **are not reduced for such fiscal year in military personnel accounts by reason of the use of such authority shall be determined. Additional reductions in outlays under defense programs in such total amount shall be achieved by a uniform percentage sequestration of new budget author-**

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[807] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

ity[808] and unobligated balances in each program, project, and activity within each account within major functional category 050 other than those military personnel accounts for which the authority provided under subparagraph (A) has been exercised, computed on the basis of the outlay rate for each such program, project, and activity determined under paragraphs (1) and (2).

(C) The President may not use the authority provided by subparagraph (A) unless he notifies the Congress on or before October 10, 1987, in the case of fiscal year 1988, or August 15 of the calendar year in which the fiscal year begins in the case of any subsequent fiscal year, of the manner in which such authority will be exercised. The Directors shall reflect the results of authority exercised under this paragraph in the reports required under section 251(a)(2).

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[808] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

(e) Exception. -- The preceding provisions of this section shall not apply if a declaration of war by the Congress is in effect.

SEC. 252. PRESIDENTIAL ORDER.

(a) ISSUANCE OF INITIAL ORDER. --

(1) IN GENERAL. -- On August 25 (or October 20, 1987, in the case of fiscal year 1988), following the submission of a report by the Director of OMB under section 251(a)(2)(B), the President, in strict accordance with the requirements of paragraph (2) and section 251(a)(3) and (4) and subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in sections 255, 256, and 257, shall make all the reductions specified in such report by issuing an order that (notwithstanding the Impoundment Control Act of 1974) --

(A) in accordance with such report, suspends the operation of each provision of Federal law that would (but for such order) require an automatic spending increase to take effect during such fiscal year in such a manner as to prevent such increase from taking effect, or reduce such increase, in accordance with such report; and

(B) in accordance with such report, sequesters new budget authority;[809] unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2)[810] of the Congressional Budget Act of 1974; and obligation limitations --

(i) for funds provided in annual appropriation Acts,[811] from each affected program, project, and activity (as set forth in the most recently enacted applicable appropriation Acts and accompanying committee reports for the program, project, or activity involved, including joint resolutions providing continuing appropriations and committee reports

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[809] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[810] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

[811] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

accompanying Acts referred to in such resolutions), applying the same reduction percentage as the percentage by which the account involved is reduced in the report submitted under section 251(a)(2)(B) or from each affected budget account if the program, project, or activity is not so set forth, and

(ii) for funds not provided in annual appropriation Acts,[812] from each budget account activity as identified in the program and financing schedules contained in the appendix to the Budget of the United States Government for that fiscal year, applying the same reduction percentage as the percentage by which the account is reduced in such report.

(2) ORDER TO BE BASED ON DIRECTOR OF OMB'S REPORT. -- The order must provide for reductions in the manner specified in section 251(a)(3), must incorporate the provisions of the report submitted under section

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[812] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

251(a)(2)(B), and must be consistent with such report in all respects. The President may not modify or recalculate any of the estimates, determinations, specifications, bases, amounts, or percentages set forth in such report in determining the reductions to be specified in the order with respect to programs, projects, and activities, or with respect to budget activities, within an account.

(3) ORDER REQUIRED IF NO REDUCTIONS ARE NEEDED. -- If the report submitted under section 251(a)(2)(B) states that no aggregate outlay[813] reductions are required for a fiscal year, the order issued by the President shall so state.

(4) EFFECT OF SEQUESTRATION UNDER INITIAL ORDER. --

(A) IN GENERAL. -- Notwithstanding section 257(7), amounts sequestered under an order issued by the President under paragraph (1) shall be withheld from obligation or expenditure pending the issuance of a final order under subsection (b) and shall be permanently

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[813] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

sequestered or reduced in accordance with such final order upon the issuance of such order.

(B) SPECIAL RULE CONCERNING REDUCTION OF PAYMENTS UNDER THE MEDICARE PROGRAM. --

(i) IN GENERAL. -- With respect to services furnished during the interim period (as defined in clause (iii)) for any fiscal year, and notwithstanding any other provision of this Act, payments under the health insurance programs under title XVIII[814] of the Social Security Act shall not be reduced by an initial order under this subsection for that fiscal year.

(ii) DIRECTOR OF OMB TO DETERMINE ANNUALIZED PERCENTAGE REDUCTION. -- The Director of OMB, in consultation with the Secretary of Health and Human Services, shall determine a percentage reduction which shall apply to payments under the health insurance programs under

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[814] 42 U.S.C. §§ 1395-1395ccc.

title XVIII[815] of the Social Security Act for services furnished in any fiscal year after the interim period for that year, such that the reduction made in such payments under the final order under subsection (b) for that year shall achieve a total reduction of 2 percent (or, if lower, the uniform percentage reduction provided under section 251(a)(3)(E)(i)) in such payments for such fiscal year as determined on a 12-month basis.

(iii) INTERIM PERIOD. -- In this subparagraph, the term "interim period" means, with respect to a fiscal year, the period beginning on October 1 of the fiscal year and ending on the date of the issuance of the final order under subsection (b) with respect to that fiscal year.

(5) ACCOMPANYING MESSAGE. -- Not later than the 15th day beginning after the President issues an initial order under paragraph (1) for any fiscal year, the President shall transmit to both Houses of Congress a single message containing all the information re-

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[815] 42 U.S.C. §§ 1395-1395ccc.

quired by section 251(a)(4) and further specifying in strict accordance with paragraph (2) --

(A) within each account, for each program, project, and activity, or budget account activity, the base from which each sequestration or reduction is taken and the amounts which are to be sequestered or reduced for each such program, project, and activity or budget account activity; and

(B) such other supporting details as the President may determine to be appropriate.

Upon receipt in the Senate and the House of Representatives, the message (and any accompanying proposals made under subsection (c)(1)) shall be referred to all committees with jurisdiction over programs, projects, and activities affected by the order.

(6) EFFECTIVE DATE OF INITIAL ORDER. --

(A) FISCAL YEAR 1988. -- The order issued by the President under paragraph (1) with respect to fiscal year 1988 shall be effective as of the day it is issued (and the President shall withhold from obligation or expenditure as provided in paragraph (4), pending the issuance of the final order under subsection (b), any amounts that are sequestered under such order).

(B) FISCAL YEARS 1989-1993. -- The order issued by the President under paragraph (1) with respect to the fiscal year 1989 or any subsequent fiscal year shall be effective as of October 1 of such fiscal year (and the President shall withhold from obligation or expenditure as provided in paragraph (4), pending the issuance of the final order under subsection (b), any amounts that are sequestered under such order).

(7) TREATMENT OF AUTOMATIC SPENDING INCREASES. --

(A) FISCAL YEARS 1987-1993. -- Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be first paid during the period beginning with the first day of such fiscal year and ending with the date on which a final order is issued pursuant to subsection (b) shall be suspended until

such final order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such final order provides that automatic spending increases shall be reduced to zero during such fiscal year, the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled. If such final order provides for the payment of the full amount of such increases, the increases suspended pursuant to such sentence shall be restored to the extent necessary to pay such reduced or full increases, and lump-sum payments in the amounts necessary to pay such reduced or full increases shall be made, for the period for which such increases were suspended pursuant to this clause.

(B) PROHIBITION AGAINST RECOUPMENT. -- Notwithstanding subparagraph (A), if an amount required to be withheld is paid, no recoupment shall be made against an individual to whom payment was made.

(C) EFFECT OF LUMP-SUM PAYMENTS ON

NEEDS-RELATED PROGRAMS. -- Lump-sum payments made under the last sentence of subparagraph (A) shall not be considered as income or resources or otherwise taken into account in determining the eligibility of any individual for aid, assistance, or benefits under any Federal or federally assisted program which conditions such eligibility to any extent upon the income or resources of such individual or his or her family or household, or in determining the amount or duration of such aid, assistance, or benefits.

(b) ISSUANCE OF FINAL ORDER. --

(1) IN GENERAL. -- On October 15 of the fiscal year (or on November 20, 1987, in the case of fiscal year 1988), after the submission of the revised report by the Director of OMB under section 251(c)(2), the President shall issue a final order under this section to make all of the reductions and sequestrations specified in such report, but only to the extent and in the manner provided in such report. The order issued under this subsection --

(A) shall include the same reductions and sequestrations as the initial order issued under subsection (a), adjusted to the extent necessary to take account of any changes in relevant amounts or percentages determined by the Director of OMB in the revised report submitted under section 251(c)(2), and shall include a reduction in payments under the health care programs under title XVIII[816] of the Social Security Act determined in accordance with subsection (a)(4)(B)(ii),

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[816] 42 U.S.C. §§ 1395-1395ccc.

(B) shall make such reductions and sequestrations in strict accordance with the requirements of sections 251(a)(3) and (4), and

(C) shall utilize the same criteria and guidelines as those which were used in the issuance of such initial order under subsection (a).

The provisions of section 251(a)(3) shall apply to the revised report submitted under section 251(c)(2) and to the order issued under this subsection in the same manner as such provisions apply to the initial report issued under section 251(a)(2)(B) and to the order issued under subsection (a).

(2) ORDER REQUIRED IF DEFICIT[817] REDUCTION IS ACHIEVED. --If the Director of OMB issues a revised report under section 251(c)(2) stating that as a result of laws enacted and regulations promulgated as final after August 15 of the calendar year in which such fiscal year begins (or October 10, 1987, in the case of fiscal year 1988) no deficit reduction is necessary to fully satisfy the requirements of

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[817] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

section 251(a)(3)(A), the order issued under this subsection shall so state and shall make available for obligation and expenditure any amounts withheld pursuant to subsection (a)(4) or (a)(7).

(3) EFFECTIVE DATE OF FINAL ORDER. --

(A) The final order issued by the President under paragraph (1) shall become effective on the date of its issuance, and shall supersede the initial order issued under subsection (a)(1).

(B) Any modification or suspension by such order of the operation of a provision of law that would (but for such order) require an automatic spending increase to take effect during the fiscal year shall apply for the one-year period beginning with the date on which such automatic increase would have taken effect during such fiscal year (but for such order).

(4) ACCOMPANYING MESSAGE. -- Not later than the 15th day beginning after the President issues a final order under paragraph (1) for any fiscal year, the President shall transmit to both Houses of Congress a single

message in the same manner as, and containing all the information required by, subsection (a)(5).

(c) PROPOSAL OF ALTERNATIVES BY THE PRESIDENT. --

(1) IN GENERAL. -- A message transmitted pursuant to subsection (a)(5) with respect to a fiscal year may be accompanied by a proposal setting forth in full detail alternative ways to reduce the deficit[818] for such fiscal year in an amount not less than the deficit reduction required under section 251(a)(3) for such fiscal year.

(2) FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES. --

(A) Subject to subparagraphs (B), (C), and (D), and subsection (d), new budget authority[819] and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued

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[818] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[819] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

by the President under subsection (b)(1) for such fiscal year. To the extent such additional reductions are made and result in additional outlay[820] reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts[821] (before taking sequestration into account). In making calculations under this subparagraph, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 251(c)(2).

(B) No actions taken by the President under subparagraph (A) for a fis-

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[820] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[821] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

cal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

(C) The President may not exercise the authority provided by this paragraph for a fiscal year unless --

(i) the President submits a single report to Congress specifying changes proposed to be made for such fiscal year pursuant to this paragraph;[822] and

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[822] On the evening of October 19, 1989, the President submitted to the Majority Leader of the Senate (before the Senate had recessed for the day) and to the Majority Leader of the House of Representatives (after the House had recessed for the day) what the President characterized as "an alternative sequester report" under this section. The "report," in full, was as follows:

Alternative Sequester Report
for the Department of Defense
for Fiscal Year 1990

> To provide for flexibility among defense programs, projects, and activities, the amount of transfer authority available to the Secretary of Defense pursuant to Section 8014 of the Department of Defense Appropriations Act, 1989, as made available by the Joint Resolution making continuing appropriations for

(continued...)

(ii) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

(D) Within 5 calendar days of session after the President submits a report to Congress under subparagraph (C)(i)

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[822] (...continued)
the fiscal year 1990, or any comparable provision subsequently enacted for fiscal year 1990, is proposed to be established at $6,000,000,000, effective upon enactment of a joint resolution approving this report.

On October 20, 1989, the Majority Leader introduced, by request, the joint resolution approving the "report" (S.J. Res. 219, 101st Cong., 1st Sess., 135 CONG. REC. S13,825 (1989)), reserving judgment as to whether the "report" complied with the requirements for that report set forth in section 252(c)(2). 135 CONG. REC. S13,825 (Oct. 20, 1989) (statement of Sen. Mitchell).

On October 27, 1989, the fifth calendar day after the date of introduction of the joint resolution, the Senate failed to discharge the Appropriations Committee of the joint resolution. Representatives of the Budget and Appropriations Committees had argued that, because it did not indicate what "programs, projects, and activities" were affected, the President's submission did not constitute a "report" within the meaning of the statute and was thus not entitled to the procedural protections afforded by this section, including discharge from the Appropriations Committee. The Senate's failure to discharge appears to reflect the Parliamentarian's belief that the report did not fulfill the statutory requirements.

for a fiscal year, but before November 25, 1987, for fiscal year 1988 or, in the case of any subsequent fiscal year, before October 20 of such fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

(E)(i) The matter after the resolving clause in any joint resolution introduced pursuant to subparagraph (D) shall be as follows: "That the report of the President as submitted on [Insert Date] under section 252(c)(2)(C)(i) is hereby approved.".

(ii) The title of the joint resolution shall be "Joint resolution approving the report of the President submitted under section 252(c)(2)(C)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(iii) Such joint resolution shall not contain any preamble.

(F)(i) A joint resolution introduced in the House of Representatives under

subparagraph (D) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection.

(ii) A joint resolution introduced in the Senate under subparagraph (D) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment[823]

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[823] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

proposed[824] in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane[825] or relevant[826] to

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[824] Section 8003(e) of the Omnibus Budget Reconciliation Act of 1987 substituted the word "proposed" here for the word "made" to reflect the fact that, in this context, committees merely propose amendments, while the Senate acts on them. Pub. L. No. 100-203, § 8003(e), 101 Stat. 1330, 1330-281 (Dec. 22, 1987).

[825] For a discussion of germaneness, see *supra* note 304.

[826] The test of relevance of amendments is broader than the germaneness test; it is a subject matter test, and amendments that deal with the subject matter of the bill are in order if they do not contain any significant matter not dealt with in the bill. 131 CONG. REC. S16,503 (1985); Senate Precedent PRL19851123-002 (Nov. 23, 1985). In the precedent of November 23, 1985, the Majority Leader (Senator Dole of Kansas) attempted to obtain a unanimous consent agreement on S. 1884, a bill to amend the Farm Credit Act of 1974, which proposed that amendments be germane. *Id.* The following colloquy took place:

> Mr. BAUCUS. -- I wonder if the majority leader would agree to change the consent agreement to allow the Senator from Montana to offer an amendment regardless of its germaneness.
>
> Mr. DOLE. Madam President, I ask unanimous consent that substitute amendments be in order and limited to 20 minutes provided they are relevant to the subject matter.
>
> Mr. BAUCUS. Reserving the right to object,

(continued...)

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[826](...continued)
Madam President, a parliamentary inquiry. I wonder what the difference between germaneness and relative to the subject matter would be. What is the difference between the two?

> The PRESIDING OFFICER (Mrs. Kassebaum of Kansas). Relevance is broader than germaneness, it is a subject matter test.
>
> Mr. BAUCUS. A further parliamentary inquiry. That means if the Senator from Montana has an amendment which has something to do with farm credit legislation, it would be in order under this agreement?
>
> The PRESIDING OFFICER. As long as it deals with the subject of the farm credit bill before us.

Id.

Senator Harkin of Iowa then addressed additional questions to the Chair regarding the relevancy test:

> Mr. HARKIN. As I understand the modification just mentioned by the distinguished majority leader, we could offer amendments that dealt with the subject matter. My concern is that I may have an amendment which goes broader than just the Farm Credit System. It will deal with farm credit but it may go beyond the bill itself, which talks basically or only about the Farm Credit System itself.
>
> The PRESIDING OFFICER. It would not be relevant if it does contain any significant matter that is not dealt with in the farm credit legislation.

(continued...)

the provisions of the joint resolution or to the order issued under section 252(b)(1) insofar as they relate to major function 050 (national defense).

(iii) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the appropriate calendar, notwithstanding any rule or precedent of the Senate, including Rule 22 of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolu-

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[826] (...continued)

Mr. HARKIN. So, Madam President, if I had an amendment that dealt with farm credit that applied both to the Farm Credit System and to, let us say, private lenders or private banks, would that be in order under the modification mentioned by the majority leader?

The PRESIDING OFFICER. If private lenders and private banks are not dealt with in the original bill, it would not be in order.

Id.

tion (and against consideration of the joint resolution) are waived, except for points of order under titles III[827] and IV[828] of the Congressional Budget Act of 1974. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment,[829] or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the respective House shall immediately pro-

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[827] *See supra* pp. 53-210.

[828] *See supra* pp. 211-245.

[829] *Cf.* 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

ceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the respective House until disposed of.

(G)(i) In the Senate, debate on a joint resolution introduced under subparagraph (D), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees). In the House, general debate on a joint resolution introduced under subparagraph (D) shall be limited to not more than 4 hours which shall be equally divided between the chairman of the Committee on Appropriations and the ranking minority member of such committee.

(ii) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint

resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order. In the House, a motion further to limit debate is in order and not debatable. In the House, a motion to recommit, with or without instructions, is in order.

(H)(i) In the House of Representatives, an amendment and any amendment to an amendment is debatable for not to exceed 30 minutes to be equally divided between the proponent of the amendment and a Member opposed thereto.

(ii) No amendment[830] that is not germane[831] or relevant[832] to the provisions of the joint resolution or to the order issued under section 252(b)(1) insofar as they relate to major function 050 (national defense) shall be in order in

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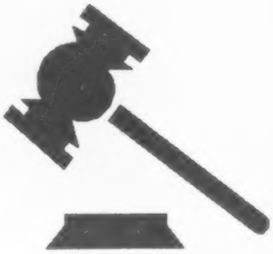
[830] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303(a)).

[831] For a discussion of germaneness, see *supra* note 304.

[832] For a discussion of relevance, see *supra* note 826.



the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between the majority leader and the minority leader (or their designees).

(iii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(iv) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subparagraph (D) or any conference report thereon if such amendment or conference report would have the effect

of decreasing any specific budget outlay[833] reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

(v) For purposes of the application of clause (iv), the level of outlays[834] and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(I) Immediately following the conclusion of the debate on a joint resolution introduced under subparagraph (D), a single quorum call at the conclusion of

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[833] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[834] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

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the debate if requested in accordance with the rules of the appropriate House, and the disposition of any amendments under subparagraph (H) (except in the House of Representatives for the motion to recommit and the disposition of any amendment proposed in a motion to recommit which has been adopted), the vote on final passage of the joint resolution shall occur.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution described in subparagraph (D) shall be decided without debate.

(K) In the Senate, points of order under titles III[835] and IV[836] of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

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[835] *See supra* pp. 53-210.

[836] *See supra* pp. 211-245.

(L) If, before the passage by the Senate of a joint resolution of the Senate introduced under subparagraph (D), the Senate receives from the House of Representatives a joint resolution introduced under subparagraph (D), then the following procedures shall apply:

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution introduced under subparagraph (D) in the Senate--

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(II)(aa) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(bb) if the joint resolution

from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes it, the Senate shall be considered to have passed the joint resolution as amended by the text of the Senate joint resolution.

(iii) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

(M) If the Senate receives from the House of Representatives a joint resolution introduced under subparagraph (D) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint reso-

lution of the House as amended by the text of the Senate joint resolution.

(d) EXISTING PROGRAMS, PROJECTS, AND ACTIVITIES NOT TO BE ELIMINATED. -- No action taken by the President under subsection (a) or (b) of this section shall have the effect of eliminating any program, project, or activity of the Federal Government.

(e) RELATIVE BUDGET PRIORITIES NOT TO BE ALTERED. -- Nothing in the preceding provisions of this section shall be construed to give the President new authority to alter the relative priorities in the Federal budget that are established by law, and no person who is or becomes eligible for benefits under any provision of law shall be denied eligibility by reason of any order issued under this part.

(f) PART-YEAR APPROPRIATIONS. --

(1) EFFECT OF FINAL ORDER ON PART-YEAR APPROPRIATION. -- **If, at the time the President issues a final order for any fiscal year, there is in effect an Act making or continuing appropriations[837] for part of the fiscal year for any budget account which is subject to reduction under the order, then the amount sequestered upon issuance of the order for that account shall be equal to the reduction amount for such account required by the final order multiplied by a fraction the numerator of which is the number of days during the fiscal year with respect to which the Act applies and the denominator of which is 365.**

(2) EFFECT OF SUBSEQUENT APPROPRIATION ON FINAL ORDER. --

(A) If, after the issuance of a final order for a fiscal year under subsection (b), an Act referred to in paragraph (1)

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[837] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

is extended or an Act making or continuing appropriations[838] for part of the fiscal year for the account is enacted, then additional amounts determined in the same manner shall be sequestered.

(B) Upon enactment of a full-year appropriation (including a continuing appropriation for the full year) for the account, the full amount of the sequestration specified by the final order, reduced by the sum of amounts previously sequestered and savings achieved by such appropriation measure when the amount enacted is less than the budget baseline[839] for such account, shall be sequestered, except that the sum shall not exceed the amount specified in the final order for the account.

(3) EFFECTIVE DATE OF SEQUESTRATIONS. -- Amounts required to be sequestered by the President under paragraph (1) or (2) shall be sequestered not later than the close of the

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[838] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[839] Section 251(a)(6) sets forth the assumptions to be used in developing the baseline. *See supra* pp. 391-400.

fifth calendar day beginning after the date of enactment into law of the relevant Act referred to in paragraph (1) or (2).

(g) PRINTING OF ORDERS. -- Each initial order and final order issued under this section shall be submitted to the Federal Register on the date it is issued and printed on the following day. If the date specified for the issuance of an order or its printing in the Federal Register under this section falls on a Sunday or legal holiday, such order shall be issued or printed on the following day.

SEC. 253. COMPLIANCE REPORT BY COMPTROLLER GENERAL.

On or before November 15 of each fiscal year (or December 15, 1987, in the case of the fiscal year 1988), the Comptroller General shall submit to the Congress and the President a report on --

(1) the extent to which each order issued by the President under section 252 for such fiscal year complies with all of the requirements contained in section 252, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not;

(2) the extent to which each report of the Director of OMB under section 251 for such fiscal year complies with all of the requirements contained in this part, either certifying that the report fully and accurately complies with such requirements or indicating the respects in which it does not; and

(3) any recommendations of the Comptroller General for improving the procedures set forth in this part.

SEC. 254. CONGRESSIONAL ACTION.

(a) Special Procedures in the Event of a Recession. --

(1) In general. -- The Director of the Congressional Budget Office shall notify the Congress at any time if --

(A) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the four quarters following such notification, such Office or the Office of Management and Budget has determined that real economic growth is projected or estimated to be less than zero with respect to each of any two consecutive quarters within such period, or

(B) the Department of Commerce preliminary reports of actual real economic growth (or any subsequent revision thereof) indicate that the rate of real economic growth for each of the most recent reported quarter and the

immediately preceding quarter is less than one percent.

Upon such notification the Majority Leader of each House shall introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in this paragraph are met and suspending the relevant provisions of this title for the remainder of the current fiscal year or for the following fiscal year or both.

(2) FORM OF JOINT RESOLUTION. --

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows:

"That the Congress declares that the conditions specified in section 254(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met; and --

"(1) the provisions of sections 3(7), 301(i), 302(f), 304(b), and 311(a) of the Congressional Budget and

Impoundment Control Act of 1974, section 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the remainder of the current fiscal year, and

"(2) the provisions of sections 3(7), 301(i), 304(b), and 311(a) (insofar as it relates to section 3(7)) of the Congressional Budget and Impoundment Control Act of 1974, sections 302(f) and 311(a) (except insofar as it relates to section 3(7)) of that Act (but only if a concurrent resolution on the budget under section 301 of that Act, for the fiscal year following the current fiscal year, has been agreed to prior to the introduction of this joint resolution), sections 1105(f) and 1106(c) of title 31, United States

Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the fiscal year following the current fiscal year.

This joint resolution shall not have the effect of suspending any final order which was issued for the current fiscal year under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 if such order was issued before the date of the enactment of this joint resolution.".

(B) The title of the joint resolution shall be "Joint resolution suspending certain provisions of law pursuant to section 254(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985."; and the joint resolution shall not contain any preamble.

(3) COMMITTEE ACTION. -- Each joint resolution introduced pursuant to paragraph (1) shall be referred to the Committee on the Budget of the House involved; and such Com-

mittee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

(4) CONSIDERATION OF JOINT RESOLUTION. --

(A) A vote on final passage of a joint resolution reported to a House of the Congress or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session of such House after the date on which the joint resolution is reported to such House or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then --

(i) the procedure in that House

shall be the same as if no such joint resolution had been received from the other House, but

(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

(B)(i) A motion in the House of Representatives to proceed to the consideration of a joint resolution under this paragraph shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the House of Representatives on a joint resolution under this paragraph shall be limited to not more than five hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to postpone, made in the House of Representatives with respect to the consideration of a joint resolution under this paragraph, and a motion to proceed to the consideration of other business, shall not be in order. A motion further to limit debate shall not be debatable. It shall not be in order to move to table or to recommit a joint resolution under this paragraph or to move to reconsider the vote by which the joint resolution is agreed to or disagreed to.

(iii) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a joint resolution under this paragraph shall be decided without debate.

(iv) Except to the extent specifically provided in the preceding provisions of this subsection or in subparagraph (D), consideration of a joint resolution under

this subparagraph shall be governed by the Rules of the House of Representatives.

(C)(i) A motion in the Senate to proceed to the consideration of a joint resolution under this paragraph shall be privileged and not debatable. An amendment to the motion shall not be in order,[840] nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the

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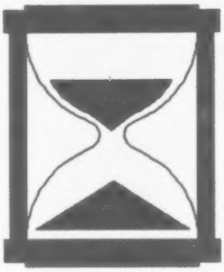
[840] *Cf.* 131 Cong. Rec. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

minority leader or their designees.

(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.



(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

(D) No amendment to a joint resolution considered under this paragraph shall be in order in either the House of

Representatives or the Senate.[841]

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[841] *Cf.* 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

(b) CONGRESSIONAL RESPONSE TO PRESIDENTIAL ORDER. --

(1) REPORTING OF RESOLUTIONS,[842] AND RECONCILIATION BILLS AND RESOLUTIONS,[843] IN THE SENATE. --

(A) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER. -- **Within two days[844] after the submission of a report by the Director of OMB under section 251(c)(2), each standing committee of the Senate may submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.**

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[842] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[843] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

[844] Section 254(b)(1)(G) defines "day" in this context. *See infra* p. 465.

(B) INITIAL BUDGET COMMITTEE ACTION. -- Not later than two days[845] after issuance of a final order by the President under section 252(b) with respect to a fiscal year, the Committee on the Budget of the Senate may report to the Senate a resolution.[846] The resolution may affirm the impact of the order issued under such section, in whole or in part. To the extent that any part of the order is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of deficit[847] reduction contained in those sections which are not affirmed.

(C) RESPONSE OF COMMITTEES. -- Committees instructed pursuant to subparagraph (B), or affected thereby, shall

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[845] Section 254(b)(1)(G) defines "day" in this context. *See infra* p. 465.

[846] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[847] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

submit their responses to the Budget Committee no later than 10 days[848] after the resolution[849] referred to in subparagraph (B) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution[850] containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under subparagraph (B) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit[851] at least equal to the total reduction directed by such instructions.

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[848] Section 254(b)(1)(G) defines "day" in this context. *See infra* p. 465.

[849] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[850] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

[851] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

(D) BUDGET COMMITTEE ACTION. -- Upon receipt of the recommendations received in response to a resolution[852] referred to in subparagraph (B), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution,[853] or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in subparagraph (B) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to

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[852] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[853] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

achieve the amount of deficit[854] reduction directed in such instructions.

(E) Point of order. -- It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution[855] reported under subparagraph (D) with respect to a fiscal year, any amendment thereto,[856] or any conference report thereon if --

(i) the enactment of such bill or

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[854] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[855] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

[856] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

resolution as reported;[857]

(ii) the adoption and enactment of such amendment; or

(iii) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit[858] **for such fiscal year to exceed**[859] **the maximum deficit amount**[860] **for such fiscal year, and for fiscal year 1988 or 1989, exceed the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year**

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[857] *Cf. supra* note 431 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

[858] Section 257(4) (*see infra* p. 520) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* pp. 13-20.

[859] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 435 (regarding section 311(a)).

[860] Section 257(5) (*see infra* p. 520) defines "maximum deficit amount" by adopting the definition of section 3(7) of the Congressional Budget Act. *See supra* pp. 20-22.

begins as measured using the budget baseline specified in section 251(a)(6)[861] of the Balanced Budget and Emergency Deficit Control Act of 1985 minus $23,000,000,000 for fiscal year 1988 or $36,000,000,000 for fiscal year 1989; unless the report submitted under section 251(c)(1) projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

(F) TREATMENT OF CERTAIN AMENDMENTS. -- In the Senate, an amendment which adds to a resolution[862] reported under subparagraph (B) an instruction of the type referred to in such subparagraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-germane[863] on the basis that the instruction constitutes new matter.

(G) DEFINITION. -- For purposes of

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[861] *See supra* pp. 391-400.

[862] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[863] For a discussion of germaneness, see *supra* note 304.

subparagraphs (A), (B), and (C), the term "day" shall mean any calendar day on which the Senate is in session.

(2) PROCEDURES. --

(A) IN GENERAL. -- Except as provided in subparagraph (B), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions,[864] and reconciliation bills and reconciliation resolutions[865] reported under this paragraph and conference reports thereon.

(B) LIMIT ON DEBATE. -- Debate in the Senate on any resolution[866] reported pursuant to paragraph (1)(B), and all

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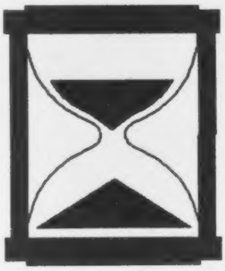
[864] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[865] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

[866] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.



(C) Limitation on amendments. -- Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions[867] reported under this subsection.

(D) Bills and resolutions received from the house. -- Any bill or resolution[868] received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution[869] of the

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[867] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

[868] Section 254(b)(2)(E) defines "resolution" in this context. *See infra* p. 468.

[869] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See infra* p. 468. Furthermore, note the effect of section 254(c) on the treatment of resolutions under this subsection. *See infra* p. 469.

Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

(E) DEFINITION. -- For purposes of this subsection, the term "resolution" means a simple, joint, or concurrent resolution.

(c) CERTAIN RESOLUTIONS TREATED AS RECONCILIATION BILLS. -- Resolutions described in subsection (b) of this section and bills reported as a result thereof shall be considered in the Senate to be reconciliation bills or resolutions[870] for purposes of the Congressional Budget Act of 1974.

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[870] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184. Section 254(b)(2)(E) also defines "resolution" in this context. *See supra* p. 468.

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS. -- Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or in benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this part.

(b) VETERANS PROGRAMS. -- The following programs shall be exempt from reduction under any order issued under this part:

National Service Life Insurance Fund (36-8132-0-7-701);

Service-Disabled Veterans Insurance Fund (36-4012-0-3-701);

Veterans Special Life Insurance Fund (36-8455-0-8-701);

Veterans Reopened Insurance Fund (36-4010-0-3-701);

United States Government Life Insurance Fund (36-8150-0-7-701);

Veterans Insurance and Indemnity (36-0120-0-1-701);

Special Therapeutic and Rehabilitation Activities Fund (36-4048-0-3-703);

Veterans' Canteen Service Revolving Fund (36-4014-0-3-705);

Benefits under chapter 21 of title 38,

United States Code, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities (36-0137-0-1-702);

Benefits under section 907 of title 38, United States Code, relating to burial benefits for veterans who die as a result of service-connected disability (36-0155-0-1-701);

Benefits under chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces (36-0137-0-1-702);

Veterans' compensation (36-0153-0-1-701); and

Veterans' pensions (36-0154-0-1-701).

(c) Net Interest. -- No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this part.

(d) Earned Income Tax Credit. -- Payments to individuals made pursuant to section 32 of the Internal Revenue Code of 1954 shall be exempt from reduction under any order issued under this part.

(e) Offsetting Receipts and Collections. -- Offsetting receipts and collections shall not be reduced under any order issued under this part.

(f) Certain Program Bases. -- Outlays[871] for programs specified in paragraph (1) of section 257 shall be subject to reduction only in accordance with the procedures established in section 251(a)(3)(C) and 256(b).

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[871] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

(g) OTHER PROGRAMS AND ACTIVITIES. --

(1)(A) The following budget accounts and activities shall be exempt from reduction under any order issued under this part:

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Administration of Territories, Northern Mariana Islands Covenant Grants (14-0412-0-1-806);

Thrift Savings Fund (26-8141-0-7-602);

Alaska Power Administration, Operations and maintenance (89-0304-0-1-271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-

271);

Bureau of Indian Affairs, miscellaneous payments to Indians (14-2303-0-1-452);

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14-9973-0-7-999);

Claims, defense (97-0102-0-1-051);

Claims, judgments, and relief acts (20-1895-0-1-806);

Coinage profit fund (20-5811-0-2-803);

Compensation of the President (11-0001-0-1-802);

Customs Service, miscellaneous permanent appropriations (20-9922-0-2-852);

Comptroller of the Currency;

Director of the Office of Thrift

Supervision;[872]

Dual benefits payments account (60-0111-0-1-601);

Eastern Indian land claims settlement fund (14-2202-0-1-806);

Exchange stabilization fund (20-4444-0-3-155);

Federal Deposit Insurance Corporation;

Federal Deposit Insurance Corporation, Bank Insurance Fund;[873]

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[872] Section 743(a)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added the words "Director of the Office of Thrift Supervision;" at this point. Pub. L. No. 101-73, § 743(a)(1), 103 Stat. 183, 437 (Aug. 9, 1989).

[873] Section 743(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck out the words "Federal Home Loan Bank Board;" at this point and inserted:

> Federal Deposit Insurance Corporation, Bank Insurance Fund;
>
> Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

(continued...)

Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

Federal Housing Finance Board;[874]

Federal payment to the railroad retirement account (60-0113-0-1-601);

Foreign military sales trust fund (11-8242-0-7-155);

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75-4305-0-3-

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[873](...continued)

Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

Pub. L. No. 101-73, § 743(a)(2), 103 Stat. 183, 437 (Aug. 9, 1989).

[874] Section 743(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck out the words "Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation;" at this point and inserted "Federal Housing Finance Board;" Pub. L. No. 101-73, § 743(a)(3), 103 Stat. 183, 437 (Aug. 9, 1989).

553);

Higher education facilities loans and insurance (91-0240-01-502);

Internal Revenue collections for Puerto Rico (20-5737-0-2-852);

Intragovernmental funds, including those from which the outlays[875] are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

Panama Canal Commission, operating expenses (95-5190-0-2-403), and Panama Canal Commission, capital outlay[876] (95-5190-0-2-403);

Medical facilities guarantee and loan fund, Federal interest subsidies for medical facilities (75-4430-03-551);

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[875] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[876] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

National Credit Union Administration;

National Credit Union Administration, central liquidity facility;

National Credit Union Administration, credit union share insurance fund;

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payments to copyright owners (03-5175-0-2-376);

Payments to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (97-0040-0-1-054);

Compact of Free Association, economic assistance pursuant to Public Law 99-658 (14-0415-0-1-806);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Payments to the United States territories, fiscal assistance (14-0418-0-1-852);

Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801);

Postal service fund (18-4020-0-3-372);

Resolution Funding Corporation;[877]

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[877] Section 743(a)(4) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added at this point:

(continued...)

Resolution Trust Corporation;

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Washington Metropolitan Area Transit Authority, interest payments (46-0300-0-1-401);

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[877](...continued)

Resolution Funding Corporation;

Resolution Trust Corporation;

Pub. L. No. 101-73, § 743(a)(4), 103 Stat. 183, 437 (Aug. 9, 1989).

Western Area Power Administration, Construction, rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271).

(B) The following budget accounts and activities shall be exempt from reduction under any order issued under this part:

Black lung benefits (20-8144-0-7-601);

Central Intelligence Agency retirement and disability system fund (56-3400-0-1-054);

Civil service retirement and disability fund (24-8135-0-7-602);

Comptrollers general retirement system (05-0107-0-1-801);

Foreign service retirement and disability fund (19-8186-0-7-602);

Judicial survivors' annuities fund

(10-8110-0-7-602);

Longshoremen's and harborworkers' compensation benefits (16-9971-0-7-601);

Military retirement fund (97-8097-0-7-602);

National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306);

Pensions for former Presidents (47-0105-0-1-802);

Railroad retirement tier II (60-8011-0-7-601);

Retired pay, Coast Guard (69-0241-0-1-403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75-0379-0-1-551);

Special benefits, Federal Employees' Compensation Act (16-1521-0-1-600);

Special benefits for disabled coal miners (75-0409-0-1-601); and

Tax Court judges survivors annuity fund (23-8115-0-7-602).

(2) Prior legal obligations of the Government in the following budget accounts and activities shall be exempt from any order issued under this part:

Agency for International Development, Housing, and other credit guarantee programs (72-4340-0-3-151);

Agricultural credit insurance fund (12-4140-0-3-351);

Biomass energy development (20-0114-0-1-271);

Check forgery insurance fund (20-4109-0-3-803);

Community development grant loan guarantees (86-0162-0-1-451);

Credit union share insurance fund (25-4468-0-3-371);

Economic development revolving fund (13-4406-0-3-452);

Employees life insurance fund (24-8424-0-8-602);

Energy security reserve (Synthetic Fuels Corporation) (20-0112-0-1-271);

Export-Import Bank of the United States, Limitation of program activity (83-4027-0-3-155);

Federal Aviation Administration, Aviation insurance revolving fund (69-4120-0-3-402);

Federal Crop Insurance Corporation fund (12-4085-0-3-351);

Federal Deposit Insurance Corporation (51-8419-0-8-371);

Federal Emergency Management Agency, National flood insurance fund (58-4236-0-3-453);

Federal Emergency Management Agency, National insurance development fund (58-4235-0-3-451);

Federal Housing Administration

fund (86-4070-0-3-371);[878]

Federal ship financing fund (69-4301-0-3-403);

Federal ship financing fund, fishing vessels (13-4417-0-3-376);

Geothermal resources development fund (89-0206-0-1-271);

Government National Mortgage Association, Guarantees of mortgage-backed securities (86-4238-0-3-371);

Health education loans (75-4307-0-3-553);

Homeowners assistance fund, Defense (97-4090-0-3-051);

Indian loan guarantee and insurance fund (14-4410-0-3-452);

International Trade Administration,

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[878] Section 743(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Savings and Loan Insurance Corporation fund (82-4037-0-3-371);" which originally appeared at this point. Pub. L. No. 101-73, § 743(c), 103 Stat. 183, 437 (Aug. 9, 1989).

Operations and administration (13-1250-0-1-376);

Low-rent public housing, Loans and other expenses (86-4098-0-3-604);

Maritime Administration, War-risk insurance revolving fund (69-4302-0-3-403);

Overseas Private Investment Corporation (71-4030-0-3-151);

Pension Benefit Guaranty Corporation fund (16-4204-0-3-601);

Rail service assistance (69-0122-0-1-401);

Railroad rehabilitation and improvement financing fund (69-4411-0-3-401);

Rural development insurance fund (12-4155-0-3-452);

Rural electric and telephone revolving fund (12-4230-8-3-271);

Rural housing insurance fund (12-4141-0-3-371);

Small Business Administration, Business loan and investment fund (73-4154-0-3-376);

Small Business Administration, Lease guarantees revolving fund (73-4157-0-3-376);

Small Business Administration, Pollution control equipment contract guarantee revolving fund (73-4147-0-3-376);

Small Business Administration, Surety bond guarantees revolving fund (73-4156-0-3-376);

Veterans Administration, Loan guaranty revolving fund (36-4025-0-3-704);

Veterans Administration, Servicemen's group life insurance fund (36-4009-0-3-701);

(h) LOW-INCOME PROGRAMS. -- The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children (75-0412-0-1-609);

Child nutrition (12-3539-0-1-605);

Food stamp programs (12-3505-0-1-605 and 12-3550-0-1-605);

Grants to States for Medicaid (75-0512-0-1-551);

Supplemental Security Income Program (75-0406-0-1-609); and

Women, infants, and children program (12-3510-0-1-605).

(i) IDENTIFICATION OF PROGRAMS. -- For purposes of subsections (g) and (h), programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government, 1986--Appendix.

SEC. 256. EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES

(a) EFFECT OF REDUCTIONS AND SEQUESTRATIONS. --

(1) REDUCTIONS IN AUTOMATIC SPENDING INCREASES. -- Notwithstanding any other provision of law, any change in the Consumer Price Index or any other index measuring costs, prices, or wages (or in any component of any such index), under a program listed in section 257(1), that is not taken into account for purposes of determining the amount of an automatic spending increase (if any) under such program for a fiscal year for which an order is issued under section 252 shall not be taken into account for purposes of determining any automatic spending increase during any fiscal year thereafter.

(2) SEQUESTRATIONS. -- Any amounts of new budget authority;[879] unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as

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[879] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

defined in section 401(c)(2)[880] of the Congressional Budget Act of 1974; or obligation limitations which are sequestered or automatic spending increases which are reduced under an order issued under section 252 are permanently cancelled or reduced; with the exception of amounts sequestered or reduced in special or trust funds, which shall remain in such funds and be available in accordance with and to the extent permitted by law, including the provisions of this Act.

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[880] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

(b) TREATMENT OF FEDERAL ADMINISTRATIVE EXPENSES. --

(1) Notwithstanding any other provision of this title, administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or account shall be subject to reduction pursuant to an order issued under section 252, without regard to any exemption, exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity, or account under this part.

(2) Notwithstanding any other provision of law, administrative expenses of any program, project, activity, or account which is self-supporting and does not receive appropriations shall be subject to reduction under a sequester order, unless specifically exempted in this joint resolution.

(3) Payments made by the Federal Government to reimburse or match administrative costs incurred by a State or political subdivision under or in connection with any program, project, activity, or account shall

not be considered administrative expenses of the Federal Government for purposes of this section, and shall be subject to reduction or sequestration under this part to the extent (and only to the extent) that other payments made by the Federal Government under or in connection with that program, project, activity, or account are subject to such reduction or sequestration; except that Federal payments made to a State as reimbursement of administrative costs incurred by such State under or in connection with the unemployment compensation programs specified in subsection (h)(1) shall be subject to reduction or sequestration under this part notwithstanding the exemption otherwise granted to such programs under that subsection.

(4) Notwithstanding any other provision of law, this subsection shall not apply with respect to the following:

(A) Comptroller of the Currency.

(B) Federal Deposit Insurance Corporation.

(C) Office of Thrift Supervision.[881]

(D) Office of Thrift Supervision.[882]

(E) National Credit Union Administration.

(F) National Credit Union Administration, central liquidity facility.

(G) Federal Retirement Thrift Investment Board.

(H) Resolution Funding Corporation.[883]

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[881] Section 743(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Home Loan Bank Board." at this point and inserted "Office of Thrift Supervision." Pub. L. No. 101-73, § 743(b)(1), 103 Stat. 183, 437 (Aug. 9, 1989).

[882] Section 743(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Savings and Loan Insurance Corporation." at this point and inserted "Office of Thrift Supervision." a second time. Pub. L. No. 101-73, § 743(b)(2), 103 Stat. 183, 437 (Aug. 9, 1989).

[883] Section 743(b)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added at this point:

(continued...)

(I) Resolution Trust Corporation.

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[883] (...continued)

(H) Resolution Funding Corporation.

(I) Resolution Trust Corporation.

Pub. L. No. 101-73, § 743(b)(3), 103 Stat. 183, 437 (Aug. 9, 1989).

(c) EFFECT OF ORDERS ON THE GUARANTEED STUDENT LOAN PROGRAM. -- (1) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965, as a consequence of an order issued pursuant to section 252, shall be achieved only from loans described in paragraphs (2) and (3) by the application of the measures described in such paragraphs.

(2) For any loan made during the period beginning on the date that an order issued under section 252 takes effect with respect to a fiscal year and ending at the close of such fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of --

(A) 0.40 percent, or

(B) the percentage by which the rate specified in such section exceeds 3 percent.

(3) For any loan made during the period

beginning on the date that an order issued under section 252 takes effect with respect to a fiscal year and ending at the close of such fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act shall be increased by 0.50 percent.

(d) SPECIAL RULES FOR MEDICARE PROGRAM. --

(1) MAXIMUM PERCENTAGE REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS. -- The maximum permissible reduction for the health insurance programs under title XVIII[884] of the Social Security Act for any fiscal year, pursuant to an order issued under section 252, consists only of a reduction of --

(A) 1 percent in the case of fiscal year 1986, and

(B) 2 percent (or such higher percentage as may apply as determined in accordance with section 252(a)(4)(B)(ii)) in the case of any subsequent fiscal year,

in each separate payment amount otherwise made for a covered service under those programs without regard to this part.

(2) TIMING OF APPLICATION OF REDUCTIONS. --

(A) IN GENERAL. -- Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment

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[884] 42 U.S.C. §§ 1395-1395ccc.

amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(B) PAYMENT ON THE BASIS OF COST REPORTING PERIODS. -- **In the case in which payment for services of a provider of services is made under title XVIII[885] of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same**

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[885] 42 U.S.C. §§ 1395-1395ccc.

proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

(C) EFFECTIVE PERIOD OF ORDER FOR FISCAL YEAR 1986. -- **For purposes of this paragraph, the effective period of a sequestration order for fiscal year 1986 is the period beginning on March 1, 1986, and ending on September 30, 1986.**

(3) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES. -- **If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B[886] of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1), of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.**

(4) NO EFFECT ON COMPUTATION OF AAPCC. --

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[886] 42 U.S.C. §§ 1395j-1395w.

In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

(e) TREATMENT OF CHILD SUPPORT ENFORCEMENT PROGRAM. -- **Notwithstanding any change in the display of budget accounts, any order issued by the President under section 252 shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.**

(f) TREATMENT OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS. -- Any order issued by the President under section 252 shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State may, after the date of the enactment of this joint resolution, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(g) FEDERAL PAY. --

(1) IN GENERAL. -- For purposes of any order issued under section 252 --

(A) Federal pay under a statutory pay system, and

(B) elements of military pay,

shall be subject to reduction under an order in the same manner as other administrative expense components of the Federal budget; except that no such order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any such statutory pay system or the rate of any element of military pay to which any individual is entitled under title 37, United States Code, or any increase in rates of pay which is scheduled to take effect under section 5305 of title 5, United States Code, section 1009 of title 37, United States Code, or any other provision of law.

(2) DEFINITIONS. -- For purposes of this subsection:

(A) The term "statutory pay system"

shall have the meaning given that term in section 5301(c) of title 5, United States Code.

(B) The term "elements of military pay" means --

(i) the elements of compensation of members of the uniformed services specified in section 1009 of title 37, United States Code,

(ii) allowances provided members of the uniformed services under sections 403a and 405 of such title, and

(iii) cadet pay and midshipman pay under section 203(c) of such title.

(C) The term "uniformed services" shall have the meaning given that term in section 101(3) of title 37, United States Code.

(h) TREATMENT OF PAYMENTS AND ADVANCES MADE WITH RESPECT TO UNEMPLOYMENT COMPENSATION PROGRAMS. --

(1) For purposes of section 252 --

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act),

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal unemployment account pursuant to section 1203 of such Act, and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 252 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

(i) TREATMENT OF MINE WORKER DISABILITY COMPENSATION INCREASES AS AUTOMATIC SPENDING INCREASES. -- An order issued by the President under section 252 may not result in eliminating or reducing an increase in disability benefits under the Federal Mine Safety and Health Act except in the manner provided for automatic spending increases under section 252(a)(1)(A), and no such increase may, pursuant to such section, be reduced below zero.

(j) COMMODITY CREDIT CORPORATION. --

(1) POWERS AND AUTHORITIES OF THE COMMODITY CREDIT CORPORATION. -- This title shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a corporation, the purpose for which it was created.

(2) REDUCTION IN PAYMENTS MADE UNDER CONTRACTS. --

(A) Payments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time an order has been issued under section 252 shall not be reduced by an order subsequently issued. Subject to subparagraph (B), after an order is issued under such section for a fiscal year, any cash payments made by the Commodity Credit Corporation --

(i) under the terms of any one-year contract entered into in

such fiscal year and after the issuance of the order; and

(ii) out of an entitlement[887] account,

to any person (including any producer, lender, or guarantee entity) shall be subject to reduction under the order.

(B) Each contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under subparagraph (A) shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity have been entered into prior to the issuance of an order under section 252, the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for the next succeeding crop of the commodity, under the authority provided in para-

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[887] Section 3(9) of the Congressional Budget Act (*see supra* p. 23) defines "entitlement authority" to mean (at least for purposes of that Act) the authority described in section 401(c)(2)(C) of that Act (*see infra* p. 218).

graph (3).

(3) DELAYED REDUCTION IN OUTLAYS[888] PERMISSIBLE. -- Notwithstanding any other provision of this joint resolution, if an order under section 252 is issued with respect to a fiscal year, any reduction under the order applicable to contracts described in paragraph (1) may provide for reductions in outlays for the account involved to occur in the fiscal year following the fiscal year to which the order applies. No other account, or other program, project, or activity, shall bear an increased reduction for the fiscal year to which the order applies as a result of the operation of the preceding sentence.

(4) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS. -- All reductions described in paragraph (2) which are required to be made in connection with an order issued under section 252 with respect to a fiscal year --

(A) shall be made so as to ensure

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[888] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

that outlays[889] for each program, project, activity, or account involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order; and

(B) with respect to commodity price support and income protection programs, shall be made in such manner and under such procedures as will attempt to ensure that --

(i) uncertainty as to the scope of benefits under any such program is minimized;

(ii) any instability in market prices for agricultural commodities resulting from the reduction is minimized; and

(iii) normal production and marketing relationships among agricultural commodities (including

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[889] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

both contract and non-contract commodities) are not distorted.

In meeting the criterion set out in clause (iii) of subparagraph (B) of the preceding sentence, the President shall take into consideration that reductions under an order may apply to programs for two or more agricultural commodities that use the same type of production or marketing resources or that are alternative commodities among which a producer could choose in making annual production decisions.

(5) NO DOUBLE REDUCTION. -- No agricultural price support or income protection program that is subject to reduction under an order issued under section 252 for a fiscal year may be subject, as well, to modification or suspension under such order as an automatic spending increase.

(6) CERTAIN AUTHORITY NOT TO BE LIMITED. -- Nothing in this joint resolution shall limit or reduce, in any way, any appropriation that provides the Commodity Credit Corporation

with budget authority[890] to cover the Corporation's net realized losses.

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[890] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

(k) COMMUNITY AND MIGRANT HEALTH CENTERS, INDIAN HEALTH SERVICES AND FACILITIES, AND VETERANS' MEDICAL CARE. --

(1) The maximum permissible reduction in budget authority[891] for any account listed in paragraph (2) for any fiscal year, pursuant to an order issued under section 252, shall be --

(A) 1 percent in the case of the fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year.

(2) The accounts referred to in paragraph (1) are as follows:

(A) Community health centers (75-0350-0-1-550).

(B) Migrant health centers (75-0350-0-1-550).

(C) Indian health facilities (75-0391-0-1-551).

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[891] Section 257(2) (*see infra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

(D) Indian health services (75-0390-0-1-551).

(E) Veterans' medical care (36-0160-0-1-703).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government--Appendix.

(l) Treatment of Obligated Balances. -- Obligated balances shall not be subject to reduction under an order issued under section 252.

SEC. 257. DEFINITIONS

For purposes of this title:

(1) The term "automatic spending increase" (except as otherwise provided in sections 255 and 256) means increases in budget outlays[892] due to changes in indexes in the following Federal programs:

National Wool Act (12-4336-0-3-351);

Special milk program (12-3502-0-1-605); and

Vocational rehabilitation (91-0301-0-1-506).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government, 1986--Appendix.

(2) The terms "budget outlays" and

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[892] Section 257(2) (*see infra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

"budget authority" have the meaning given to such terms in sections 3(1)[893] and 3(2),[894] respectively, of the Congressional Budget and Impoundment Control Act of 1974.

(3) The term "concurrent resolution on the budget" has the meaning given to such term in section 3(4) of the Congressional Budget and Impoundment Control Act of 1974.

(4) The term "deficit" has the meaning given to such term in section 3(6)[895] of the Congressional Budget and Impoundment Control Act of 1974.

(5) The term "maximum deficit amount", with respect to any fiscal year, means the maximum deficit amount for such fiscal year determined under section 3(7)[896] of the Congressional Budget and Impoundment Control Act of 1974.

(6) The term "real economic growth",

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[893] *See supra* p. 10.

[894] *See supra* p. 10-11.

[895] *See supra* pp. 13-20.

[896] *See supra* pp. 20-22.

with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

(7) The terms "sequester" and "sequestration" (subject to section 252(a)(4)) refer to or mean the cancellation of new budget authority,[897] unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2)[898] of the Congressional Budget Act of 1974, and obligation limitations.

(8) The term "account" means an item for which appropriations are made in any appropriation Act[899] used to determine the budget base, and, for items not provided for

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[897] Section 257(2) (*see supra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[898] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

[899] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the Appendix to the President's budget.

(9) The term "sequesterable resource" means new budget authority;[900] unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2)[901] of the Congressional Budget Act of 1974; and obligation limitations for budget accounts, programs, projects, and activities that are not exempt from reduction or sequestration under this part.

(10) The term "margin" means $10,000,000,000 with respect to each of fiscal years 1988 through 1992 and zero with respect to fiscal year 1993.

(11) As used in this part, all references

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[900] Section 257(2) (*see supra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[901] *See supra* pp. 216-221. Note that section 257(11) of Gramm-Rudman-Hollings defines certain appropriated entitlements as spending authority under section 401(c)(2) for purposes of Gramm-Rudman-Hollings. *See infra* pp. 522-525.

to section 401(c)(2)[902] of the Congressional Budget Act of 1974 shall include (but are not limited to) payments to any person or government under terms of law for the following programs:

(A) Claims, defense (97-0102-0-1-051).

(B) Veterans compensation (36-0153-0-1-701).

(C) Veterans pensions (36-0154-0-1-701).

(D) Burial benefits and miscellaneous assistance (36-0155-0-1-701).

(E) Readjustment benefits (36-0137-0-1-702).

(F) Loan guaranty revolving fund (36-4025-0-3-704).

(G) Guaranteed student loans (91-0230-0-1-502).

(H) Social services block grant (75-

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[902] *See supra* pp. 216-221.

1634-0-1-506).

(I) Family social services (75-1645-0-1-506).

(J) Rehabilitation services and handicapped research (91-0301-0-1-506).

(K) Grants to States for medicaid (75-0512-0-1-551).

(L) Special benefits for disabled coal miners (75-0409-0-1-601).

(M) Black lung disability trust fund (20-8144-0-7-601).

(N) Special benefits (16-1521-0-1-602).

(O) Federal unemployment benefits and allowances (16-0326-0-1-603).

(P) Supplemental security income program (75-0406-0-1-609).

(Q) Family support payments to States (75-1501-0-1-609).

(R) Food stamp program (12-3505-

0-1-605).

(S) Child nutrition programs (12-3539-0-1-605).

(T) Retired pay, coast guard (69-0241-0-1-403).

(U) Government payment for annuitants, employees health benefits (24-0206-0-1-551).

(12) The sale of an asset means the sale to the public of any asset, whether physical or financial, owned in whole or in part by the United States. The term "prepayment of a loan" means payments to the United States made in advance of the schedules set by law or contract when the financial asset is first acquired, such as the prepayment to the Federal Financing Bank of loans guaranteed by the Rural Electrification Administration. If a law or contract allows a flexible payment schedule, the term "in advance" shall mean in advance of the slowest payment schedule allowed under such law or contract.

(13) The term "outlay rate", with respect to any budget account, program, project, or activity, means --

(A) the ratio of outlays[903] resulting in the fiscal year involved from new budgetary resources for such budget account, program, project, or activity to such new budgetary resources; or

(B) the ratio of outlays[904] resulting in the fiscal year involved from unobligated balances for such budget account, program, project, or activity to such unobligated balances.

(14) The term "combined outlay rate", with respect to any budget account, program, project, or activity, means the weighted average (by budgetary resources) of the ratios determined under subparagraphs (A) and (B) of paragraph (13) for such budget account, program, project, or activity.

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[903] Section 257(2) (*see supra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[904] Section 257(2) (*see supra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

SEC. 258. MODIFICATION OF PRESIDENTIAL ORDER

(a) INTRODUCTION OF JOINT RESOLUTION. -- At any time after the Director of OMB issues a report under section 251(c)(2) for a fiscal year, but before the close of the tenth calendar day of session in that session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 252 for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS. --

(1) NO REFERRAL TO COMMITTEE. -- A joint resolution introduced in the Senate or the House of Representatives under subsection (a) shall not be referred to a committee of the Senate or the House of Representatives, as the case may be, and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection.

(2) IMMEDIATE CONSIDERATION. -- On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including Rule 22 of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived, except for points of order

under titles III[905] or IV[906] of the Congressional Budget Act of 1974. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment,[907] or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the respective House

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[905] *See supra* pp. 53-210.

[906] *See supra* pp. 211-245.

[907] *Cf.* 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

until disposed of.

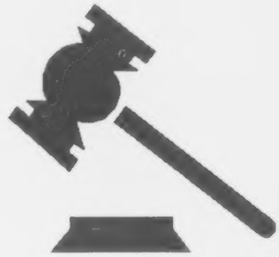
(3) DEBATE. --

(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees). In the House, general debate on a joint resolution introduced under subsection (a) shall be limited to not more than 4 hours which shall be equally divided between the majority and minority leaders.

(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order. In the House, a motion further to

limit debate is in order and not debatable. In the House, a motion to recommit is in order.

(C)(i) In the House of Representatives, an amendment and any amendment thereto is debatable for not to exceed 30 minutes to be equally divided between the proponent of the amendment and a Member opposed thereto.



(ii) No amendment[908] that is not germane[909] or relevant[910] to the provisions of the joint resolution or to the order issued under section 252(b)(1) shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30

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[908] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

[909] For a discussion of germaneness, see *supra* note 304.

[910] For a discussion of relevance, see *supra* note 826.

minutes to be equally divided between the majority leader and the minority leader (or their designees).

(iii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(4) VOTE ON FINAL PASSAGE. -- Immediately following the conclusion of the debate on a joint resolution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, and the disposition of any amendments under paragraph (3) (except for the motion to recommit in the House of Representatives), the vote on final passage of the joint resolution shall occur.

(5) APPEALS. -- Appeals from the decisions of the Chair relating to the application of the

rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(6) CONFERENCE REPORTS. -- In the Senate, points of order under titles III[911] and IV[912] of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(7) RESOLUTION FROM OTHER HOUSE. -- If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

(A) The joint resolution of the House of Representatives shall not be referred to a committee.

(B) With respect to a joint resolution introduced under subsection (a) in

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[911] *See supra* pp. 53-210.

[912] *See supra* pp. 211-245.

the Senate --

(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes it, the Senate shall be considered to have passed the joint resolution as amended by the text of the Senate joint resolution.

(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

(8) SENATE ACTION ON HOUSE RESOLUTION. --

If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

PART D
BUDGETARY TREATMENT OF SOCIAL SECURITY TRUST FUNDS

SEC. 261. TREATMENT OF TRUST FUNDS.

(a) FISCAL YEARS 1986 THROUGH 1992. --

(1) IN GENERAL. -- Section 710 of the Social Security Act (as added by paragraph (1) of subsection (a) of section 346 of the Social Security Amendments of 1983) is amended --

(A) by striking out all beginning with "the" the first place it appears down through "Disability Insurance Trust Fund, the" and inserting in lieu thereof "the";

(B) by striking out the comma after "Hospital Insurance Trust Fund";

(C) by striking out "sections 1401,

3101, and 3111" and inserting in lieu thereof "sections 1401(b), 3101(b), and 3111(b)";

(D) by redesignating all after the section designation as subsection (b);

(E) by inserting immediately after the section designation the following:

> **"(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending**

(budget outlays[913]) of the United States Government."; and

(F) by adding at the end thereof the following new subsection:

"(c) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act[914] that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund,

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[913] Section 257(2) (*see supra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

[914] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

> or for payments from either such Trust Fund to the general fund of the Treasury.".

(2) APPLICATION. -- The amendments made by paragraph (1) shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.

(b) FISCAL YEAR 1993 AND THEREAFTER. -- Section 710(a) of the Social Security Act (42 U.S.C. 911 note), as amended by section 346(b) of the Social Security Amendments of 1983 (to be effective with respect to fiscal years beginning after September 30, 1992) is amended --

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

> "(2) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation

Act[915] that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.".

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[915] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

PART E
MISCELLANEOUS AND RELATED PROVISIONS

SEC. 271. WAIVERS AND SUSPENSIONS; RULEMAKING POWERS.

(a) Budget Act Waivers in the Senate. -- Section 904 of the Congressional Budget Act of 1974 is amended by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

> **"(c) Sections 305(b)(2) and 306 of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.".**

(b) Other Waivers and Suspensions in the Senate. -- Sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a), 359 of the Congressional Budget Act of 1974 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen

and sworn. This subsection shall not apply to any joint resolution reported or discharged pursuant to section 254(a) of this joint resolution.

(c)[916] APPEALS OF RULINGS. -- An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under section 301(i), 302(c), 302(f), 304(b), 306, 310(d), 310(g), or 311(a) of the Congressional Budget Act of 1974.[917]

(d)[918] RULEMAKING POWERS. -- The provisions of this title, other than those relating to the activities of the executive and judicial branches of the Government, are enacted by the Congress --

(1) as an exercise of the rulemaking power of the House of Representatives and

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[916] Section 210 of the Balanced Budget and Emergency Deficit Reduction Reaffirmation Act of 1987 added this new subsection.

[917] Note that subsections (a) and (b) of the Byrd Rule also require the affirmative vote of 60 Senators to appeal the Chair under certain circumstances in connection with reconciliation. *See infra* pp. 595-597.

[918] This was originally subsection (c). Section 210 of the Balanced Budget and Emergency Deficit Reduction Reaffirmation Act of 1987 redesignated this subsection as subsection (d).

the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

SEC. 272. RESTORATION OF TRUST FUND INVESTMENTS.

(a) RESTORATION OF SOCIAL SECURITY TRUST FUNDS AND CERTAIN OTHER FUNDS. --

(1) REISSUANCE OF OBLIGATIONS. -- The Secretary of the Treasury shall immediately reissue to each fund listed in paragraph (3) obligations under chapter 31 of title 31, United States Code, which are identical, with respect to interest rate and maturity, to public debt obligations held by such fund which --

(A) were redeemed during the period beginning with September 1, 1985, and ending with September 29, 1985, and

(B) as determined by such Secretary on the basis of standard investment procedures for such fund in effect on September 1, 1985, would not have been redeemed if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

Such obligations shall be substituted for obligations which are held by such fund on the date of the enactment of this joint resolution in a manner which will ensure that, after such substitution, the holdings of such fund will replicate to the maximum extent practicable the holdings which would have been held by such fund on such date if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

(2) APPROPRIATION TO FUNDS OF INTEREST LOST ON OR AFTER SEPTEMBER 1, 1985. -- The Secretary of the Treasury shall pay on the normal interest payment date to each fund listed in paragraph (3), from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary to be equal to the excess of --

(A) the net amount of interest which would have been earned by such fund, during the period beginning with September 1, 1985, and ending with the date of the enactment of this joint resolution, if all noninvestments, redemptions, and disinvestments with respect to such fund

which --

(i) occurred during such period, and

(ii) would not have occurred if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985, had not occurred, over

(B) the net amount of interest actually earned by such fund during such period.

(3) FUNDS AFFECTED. -- The funds referred to in paragraphs (1) and (2) are the following:

(A) the Federal Old-Age and Survivors Insurance Trust Fund,

(B) the Federal Disability Insurance Trust Fund,

(C) the Federal Hospital Insurance Trust Fund,

(D) the Federal Supplementary Medical Insurance Trust Fund,

(E) the Railroad Retirement Account,

(F) the Civil Service Retirement and Disability Fund, and

(G) all other funds (other than the funds referred to in subsection (b) or (c)) listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985.

(b) RESTORATION OF DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND. --

(1) ISSUANCE OF OBLIGATIONS. -- The Secretary of the Treasury shall immediately issue to the Department of Defense Military Retirement Fund obligations under chapter 31 of title 31, United States Code, which such Secretary, in consultation with the Secretary of Defense, determines would have been issued to such fund on October 1, 1985, if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on

August 1, 1985. Such obligations shall be market-based special obligations issued at prices, including accrued interest, prevailing for such obligations on October 1, 1985. Such obligations shall be substituted for all obligations which were purchased by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, with amounts which were transferred to such fund on October 1, 1985.

(2) APPROPRIATION TO FUND OF INTEREST LOST ON OR AFTER OCTOBER 1, 1985. --

(A) IN GENERAL. -- The Secretary of the Treasury shall immediately pay to the Department of Defense Military Retirement Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary, in consultation with the Secretary of Defense, to be equal to the excess of --

(i) the interest which would have been earned by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, if the obligations issued pursuant to paragraph (1) had been issued on October 1, 1985, over

(ii) the amount of interest actually collected by such fund during such period on obligations purchased by such fund with amounts which were transferred to such fund on October 1, 1985.

(B) INVESTMENT OF INTEREST RECEIPTS. -- The Secretary of the Treasury shall immediately invest the amount paid to the Department of Defense Military Retirement Fund pursuant to subparagraph (A) in obligations designated by the Secretary of Defense. Such obligations shall be market-based special obligations issued with an issue date of November 15, 1985, and at prices, including accrued interest, prevailing for such obligations on November 15, 1985.

(c) APPROPRIATION TO CERTAIN FUNDS WITH RESPECT TO UNINVESTED BALANCES AFTER DECEMBER 6, 1985. --

(1) IN GENERAL. -- The Secretary of the Treasury shall immediately pay, from amounts in the general fund not otherwise

appropriated, to each fund which is listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985, and which invests in market-based special obligations under chapter 31 of title 31, United States Code, an amount equal to the interest which would have been earned by such fund during the period beginning with December 7, 1985, and ending with the date of the enactment of this joint resolution, if the daily balance in such fund which the Secretary of the Treasury was requested to invest during such period but was unable to invest, because of the expiration of the temporary debt limit, had been invested each day during such period, overnight, in obligations under such chapter 31 earning interest at a rate determined by the Secretary of the Treasury in accordance with the standard practice of the Department of the Treasury.

(2) EXPIRATION OF TEMPORARY DEBT LIMIT DEFINED. -- **For purposes of paragraph (1), the term "expiration of the temporary debt limit" means the expiration of the period described in section 1 of the Act entitled "An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust**

funds", approved November 14, 1985 (Public Law 99-155).

(d) ADDITIONAL APPROPRIATION TO OASDI TRUST FUNDS OF INTEREST LOST FROM ACTIONS TAKEN IN SEPTEMBER AND OCTOBER 1984. --

(1) IN GENERAL. -- On December 31, 1985, the Secretary of the Treasury shall pay to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, amounts determined under this subsection.

(2) AMOUNT PAID TO EACH TRUST FUND. -- The amount paid to each such Trust Fund pursuant to paragraph (1) shall be an amount determined jointly by the Secretary of the Treasury and the Secretary of Health and Human Services to be sufficient to fully compensate such Trust Fund for interest losses arising from the premature redemption, during the period beginning with September 1, 1984, and ending with October 31, 1984, of securities maturing during the period beginning with calendar year 1987 and ending with calendar year 1991.

(3) LIMITATION. -- The total amount paid from the general fund of the Treasury pursuant to paragraph (1) shall not exceed $550,000,000.

(4) ADJUSTMENTS. --

(A) DETERMINATION OF SHORTFALLS AND EXCESSES IN PAYMENTS TO TRUST FUNDS. -- As soon as practicable after May 31, 1986, the Secretary of the Treasury and the Secretary of Health and Human Services shall jointly determine any shortfall or excess in the amount paid to each Trust Fund pursuant to paragraph (1) caused by --

(i) the difference between actual interest rates and interest rates assumed for purposes of paragraph (1), and

(ii) the difference between the actual amount of securities redeemed in January 1986 for purposes of compliance with section 201(l)(3)(B) of the Social Security Act and the amount of securities assumed for purposes of paragraph (1) to be redeemed in such month for purposes of compliance with such section.

(B) PAYMENT OF SHORTFALLS AND EXCESSES. -- On June 30, 1986, the Secretary of the Treasury shall --

(i) in the case of a shortfall in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, the amount of such shortfall, or

(ii) in the case of an excess in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to the general fund of the Treasury, from such Trust Fund, the amount of such excess (but not to exceed the amount paid to such Trust Fund pursuant to paragraph (1)).

SEC. 273. REVENUE ESTIMATES

For the purposes of revenue legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees[919] of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of the purposes of this Act.

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[919] This section reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* Congressional Budget Act section 301(i)(2)(C), *supra* p. 92; section 302(g), *supra* p. 105; section 310(d)(4), *supra* p. 190; and section 311(c), *supra* p. 210.

SEC. 274. JUDICIAL REVIEW.

(a) Expedited Review. --

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any order that might be issued pursuant to section 252 violates the Constitution.

(2) Any Member of Congress, or any other person adversely affected by any action taken under this title, may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief concerning the constitutionality of this title.

(3) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory and injunctive relief on the ground that the terms of an order issued under section 252 do not comply with the requirements of this title.

(4) A copy of any complaint in an action brought under paragraph (1), (2), or (3) shall be promptly delivered to the Secretary of the

Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(5) Any action brought under paragraph (1), (2), or (3) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1), (2), or (3) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT. -- Notwithstanding any other provision of law,any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1), (2), or(3) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1), (2), or (3) of subsection (a) shall be issued by a single Justice of

the Supreme Court.

(c) EXPEDITED CONSIDERATION. -- It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) NONCOMPLIANCE WITH SEQUESTRATION PROCEDURES. --

(1) If it is finally determined by a court of competent jurisdiction that an order issued by the President under section 252(b) for any fiscal year --

(A) does not reduce automatic spending increases under any program specified in section 257(l) to the extent that such increases are required to be reduced by part C of this title (or reduces such increases by a greater extent than is so required),

(B) does not sequester the amount of new budget authority,[920] new loan guar-

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[920] Section 257(2) (*see supra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

antee commitments, new direct loan obligations, or spending authority[921] which is required to be sequestered by such part (or sequesters more than that amount) with respect to any program, project, activity, or account, or

(C) does not reduce obligation limitations by the amount by which such limitations are required to be reduced under such part (or reduces such limitations by more than that amount) with respect to any program, project, activity, or account, the President shall, within 20 days after such determination is made, revise the order in accordance with such determination.

(2) If the order issued by the President under section 252(b) for any fiscal year --

(A) does not reduce any automatic spending increase to the extent that such increase is required to be reduced by part C of this title,

(B) does not sequester any amount

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[921] Section 401(c)(2) of the Congressional Budget Act defines "spending authority." *See supra* pp. 216-221.

of new budget authority,[922] new loan guarantee commitments, new direct loan obligations, or spending authority[923] which is required to be sequestered by such part, or

(C) does not reduce any obligation limitation by the amount by which such limitation is required to be reduced under such part, on the claim or defense that the constitutional powers of the President prevent such sequestration or reduction or permit the avoidance of such sequestration or reduction, and such claim or defense is finally determined by the Supreme Court of the United States to be valid, then the entire order issued pursuant to section 252(b) for such fiscal year shall be null and void.

(e) TIMING OF RELIEF. -- No order of any court granting declaratory or injunctive relief from the order of the President issued under section 252,

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[922] Section 257(2) (*see supra* p. 519) defines "budget authority" by adopting the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 10-11.

[923] Section 401(c)(2) of the Congressional Budget Act defines "spending authority." *See supra* pp. 216-221.

including but not limited to relief permitting or requiring the expenditure of funds sequestered by such order, shall take effect during the pendency of the action before such court, during the time appeal may be taken, or, if appeal is taken, during the period before the court to which such appeal is taken has entered its final order disposing of such action.

(f) ALTERNATIVE PROCEDURES FOR THE JOINT REPORTS OF THE DIRECTORS. --

(1) In the event that any of the reporting procedures described in section 251 are invalidated, then any report of the Directors referred to in section 251(a) or (c)(1) shall be transmitted to the joint committee established under this subsection.

(2) Upon the invalidation of any such procedure there is established a Temporary Joint Committee on Deficit Reduction, composed of the entire membership of the Budget Committees of the House of Representatives and the Senate. The Chairman of these two committees shall act as Co-Chairmen of the Joint Committee. Actions taken by the Joint Committee shall be determined by the majority vote of the members representing each House. The purposes of the Joint Committee

are to receive the reports of the Directors as described in paragraph (1), and to report (with respect to each such report of the Directors) a joint resolution as described in paragraph (3).

(3) No later than 5 days after the receipt of a report of the Directors in accordance with paragraph (1), the Joint Committee shall report to the House of Representatives and the Senate a joint resolution setting forth the contents of the report of the Directors.

(4) The provisions relating to the consideration of a joint resolution under section 254(a)(4) shall apply to the consideration of a joint resolution reported pursuant to this subsection in the House of Representatives and the Senate, except that debate in each House shall be limited to two hours.

(5) Upon its enactment, the joint resolution shall be deemed to be the report received by the President under section 251(b) or (c)(2) (whichever is applicable).

(g) PRESERVATION OF OTHER RIGHTS. -- The rights

created by this section are in addition to the rights of any person under law, subject to subsection (e).

(h) ECONOMIC DATA, ASSUMPTIONS, AND METHODOLOGIES. -- The economic data, assumptions, and methodologies used by the Comptroller General in computing the base levels of total revenues and total budget outlays,[924] as specified in any report issued by the Comptroller General under section 251(b) or (c)(2), shall not be subject to review in any judicial or administrative proceeding.

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[924] Section 257(2) (*see supra* p. 519) defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

SEC. 275. EFFECTIVE DATES.

(a) IN GENERAL. --

(1) Except as provided in paragraph (2) and in subsections (b) and (c), this title and the amendments made by this title shall become effective on the date of the enactment of this title and shall apply with respect to fiscal years beginning after September 30, 1985.

(2)(A) The amendment made by section 201(a)(2), and the amendment made by section 201(b) insofar as it relates to subsections (c), (f), and (g) of section 302 of the Congressional Budget Act of 1974 and to subsections (c), (d), and (g) of section 310 of that Act), shall become effective April 15, 1986.

(B) The amendment made by section 212 shall become effective February 1, 1986.

(b) EXPIRATION. --

(1) Part C of this title, and the other provisions contained in or added by this title which are listed in paragraph (2), shall expire September 30, 1993.

(2) The other provisions referred to in paragraph (1) are as follows:

(A) section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 and the second sentence of section 3(6) of such Act (as added by section 201(a)(1) of this joint resolution);

(B) sections 301(i) and 304(b) of the Congressional Budget Act of 1974 and the portion of section 311(a) of such Act which begins with "or, in the Senate" and ends with "paragraph (2) of such subsection)" (as added by section 201(b) of this joint resolution);

(C) sections 1105(f) and 1106(c) of title 31, United States Code (as added by sections 241(b) and 242(b) of this joint resolution); and

(D) section 271(b) of this joint resolution.

(c) OASDI Trust Funds. -- The amendments made by part D shall apply as provided in such part.

Special Issue:

SHIFTS
FROM ONE YEAR
TO ANOTHER

Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 prohibits counting as savings shifts from one year to another. Section 202 provides:

SEC. 202. PROHIBITION OF COUNTING AS SAVINGS THE TRANSFER OF GOVERNMENT ACTIONS FROM ONE YEAR TO ANOTHER

(a) In General. -- Except as otherwise provided in this section,[925] any law or regulation that has the effect of transferring an outlay,[926] receipt, or revenue of the United States from one fiscal year to an adjacent fiscal year shall not be treated as altering the deficit[927] or producing net deficit reduction in any fiscal year for purposes of the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985.

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[925] *See* subsection (b) *infra* p. 570.

[926] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[927] Section 3(6) of the Congressional Budget Act defines "deficit" (*see supra* pp. 13-20) and section 257(4) of Gramm-Rudman-Hollings (*see supra* p. 520) adopts the definition of section 3(6).

(b) Exceptions. -- Subsection (a) shall not apply if the law making the transfer stipulates[928] that such transfer --

(1) is a necessary (but secondary) result of a significant policy change;[929]

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[928] In something less than full compliance with this provision, one stipulation simply specified that "amendments made by this title shall be considered an exemption under section (b)." Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 6004, 101 Stat. 1330, 1330-278 (Dec. 22, 1987) (Civil Service and Postal Service Programs).

[929] *See, e.g.*, Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 11001 (Dec. 19, 1989); H.R. Conf. Rep. No. 101-386, 101st Cong., 1st Sess. 405-06 (1989); 125 Cong. Rec. H9,446 (Nov. 21, 1989) ("any provision of this Act"); Act making supplemental appropriations for the Department of Veterans Affairs for the fiscal year ending September 30, 1989, and for other purposes, Pub. L. No. 101-45, 103 Stat. 97, 108 (June 30, 1989) (Advance Deficiency Payments); Stuart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, § 1004(b), 102 Stat. 3224, 3264 (Nov. 7, 1988) (Prohibition of Reduction of Section 8 Contract Rents); Rural Development--Agriculture Appropriations Act, 1989, Pub. L. No. 100-460, 102 Stat. 2229, 2253 (Oct. 1, 1988) (Conservation Reserve Program); Department of Housing and Urban Development--Independent Agencies Appropriations Act, 1989, Pub. L. No. 100-404, 102 Stat. 1014, 1026 (Aug. 19, 1988) (NASA Research and Development); Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 4031(c), 101 Stat. 1330, 1330-76 (Dec. 22, 1987) (Payment Cycle Standards for medicare); Joint Resolution making continuing appropriations for the fiscal year 1988, and for other purposes, Pub. L. No. 100-202, 101 Stat. 1329, 1329-202 (Dec. 22, 1987) (NASA Research and Development).

(2) provides for contingencies; or

(3) achieves savings made possible by changes in program requirements[930] or by greater efficiency of operations.[931]

An editorial in the *Washington Post* (written after the adoption of section 202) described the evil that section 202 was originally intended to address:

> **Floating Paydays**
>
> OUR LEADERS keep trying to do us the ultimate favor of cutting the budget deficit without cutting the budget, and we suppose it's churlish not to be grateful. Their latest effort involves the floating payday.
>
> Federal employees tend to be paid two weeks at a time. For a lot of them this year, that will mean a payday the first week of October. That turns out to represent both a problem and an opportunity. The problem is that the fiscal year begins Oct. 1; the early October paychecks would thus normally be charged to fiscal 1990, and be part of the 1990 deficit. The

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[930] *See, e.g.*, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 7004(a), 101 Stat. 1330, 1330-280 (Dec. 22, 1987) (Cash Sales of Properties Acquired Through Foreclosures).

[931] Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 202, 101 Stat. 754, 784 (Sept. 29, 1987) (codified at 2 U.S.C. § 909).

> opportunity is to pay these employees early, on Friday, Sept. 29. That would doubtless make the employees happier and move the expenditure into fiscal 1989, all in the same deft stroke. Since no one is paying that much attention to the 1989 deficit any more, as a political proposition the cost would simply disappear.
>
> Of course grown-ups would not resort to games like these, you say. Wrong. The Department of Defense is already doing it. Secretary Dick Cheney ordered the forward creep himself, under authority Congress gave the department a couple of years ago when the virtues of the step first dawned on the armed services committees.
>
> . . . .
>
> It's an understandable point of view. Our own suggestion is that they simply give all federal employees their full year's pay for fiscal 1990 on Sept. 30 (with a suitable discount for the advance, of course). The fiscal 1990 deficit would positively melt away, and we would all live happily ever after.[932]

What became section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 first appeared in the Senate leadership compromise version of the revision of Gramm-Rudman-Hollings. The Senate adopted the amendment (to H.J. Res. 324) containing the provision on July 31, 1987, by a vote of 71 to 21. The original Senate-passed version read as follows:

> PROHIBITION OF COUNTING AS SAVINGS
> THE TRANSFER OF GOVERNMENT ACTIONS
> FROM ONE YEAR TO ANOTHER

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[932] *Floating Paydays*, Wash. Post, June 26, 1989, at A10, col. 1. (c) The Washington Post. Reprinted with permission.

Sec. 225. (a) For purposes of titles III[933] and IV[934] of the Congressional Budget and Impoundment Control Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985, any action of the United States Government that is transferred from one fiscal year to an adjacent fiscal year, including a payment, expenditure, receipt of funds from the sale of an asset, and the collection of revenues and other receipts, shall not be treated as causing a reduction in the deficit[935] for the fiscal year from which the transfer was made except to the extent that such transfer reduces the sum of the deficits for the two fiscal years by at least $100,000,000. For purposes of this section, an action shall be considered to have been transferred when the action is taken in a different fiscal year and such change in the year is not --

(1) a necessary but secondary result of a significant policy change;

(2) to provide for contingencies; or

(3) to achieve savings made possible by or through changes in requirements or greater efficiency of operations.

(b) For purposes of the application of this section to the Congressional Budget and Impoundment

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[933] *See supra* pp. 53-210.

[934] *See infra* pp. 211-245.

[935] Section 3(6) of the Congressional Budget Act defines "deficit" (*see supra* pp. 13-20) and section 257(4) of Gramm-Rudman-Hollings (*see supra* p. 520) adopts the definition of section 3(6).

> Control Act of 1974, the level of outlays[936] and the deficit[937] for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[938] of the House of Representatives or the Senate, as the case may be.[939]

The conference report describes the section:

> 7. Prohibition Against Counting Certain Actions as Savings
>
> *Current Law*
>
> Under current practice, the deficit for a fiscal year can be reduced by transferring certain actions by the Federal Government between that fiscal year and another fiscal year, even if the deficit for the other fiscal year is increased as a result.

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[936] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[937] Section 3(6) of the Congressional Budget Act defines "deficit" (*see supra* pp. 13-20) and section 257(4) of Gramm-Rudman-Hollings (*see supra* p. 520) adopts the definition of section 3(6).

[938] This section reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 301(i)(2)(C), *supra* p. 92; section 302(g), *supra* p. 105; section 310(d)(4), *supra* p. 190; section 311(c), *supra* p. 210; and section 273 of Gramm-Rudman-Hollings, *supra* p. 556.

[939] H.J. Res. 324, 100th Cong., 1st Sess. (July 31, 1987) (as received in the House with Senate amendments).

Senate Amendment

The Senate amendment (Section 225) provides that a transfer of any action by the Federal Government -- including payments, expenditures, asset sales, and the collection of revenues and receipts -- from one fiscal year to an adjacent fiscal year shall not be treated as reducing the deficit for the fiscal year from which the transfer is made unless, as a result of the transfer, the deficit for the period covered by both fiscal years is reduced by at least $100 million.

The Senate amendment specifies the conditions for determining (for purposes of this requirement) whether an action by the Federal Government constitutes a transfer and further specifies that its provisions shall be enforced on the basis of estimates made by the House and Senate Budget Committees.

Conference Agreement

The conference agreement prohibits the savings resulting from the transfer of outlays, receipts, or revenues from one year to another to be counted as changing the deficit, except for certain types of transfers identified in law. The conferees recognize that the determinations required under this provision for the 1974 Budget Act will be based on estimates made by the House and Senate Budget Committees.[940]

In conference, House conferees insisted on the substitution of a new mechanism for applying the exceptions by which the law in question could direct its own scorekeeping. This led to the two problems that the current law creates.

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[940] H.R. Conf. Rep. No. 100-313, 100th Cong., 1st Sess. 65-66 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 765-66.

By providing this mechanism for applying the exception, the current law impliedly prohibits all transfers that do not contain the magic words applying the exception. Even if the transfer is a necessary (but secondary) result of a significant policy change, does provide for contingencies, or does achieve savings made possible by changes in program requirements or by greater efficiency of operations, the section by its terms would apply to prohibit scorekeepers from counting the savings.

The present language thus creates a trap for the unwary Senator. Unless the Senator knows about the section and thinks about the issue while drafting the legislation in question, the section stands as a snare waiting to catch the legislation. This result leads to increased disrespect for the budget process.

The second problem that the language of the current law creates is to invite overuse of the exception. As the exception requires simply that the subject legislation specify that it is for one of the good purposes listed in order to avoid the sanction of the prohibition, the exception has been applied to a number of shifts between years that clearly do not fall within the exception as intended. It has become an easily-avoided prohibition on budget gimmickry. Senator Sanford's bill S. 101[941] would repeal the exception.

Section 202(a) cannot be used to free up additional spending money, but applies only to prohibit the creation of spending room by artificial transfers. Congress made this intent evident in the title of the section and the description of the conference agreement for section 202 above, both of which use the word "savings." The drafters of the section never intended the section to be available as a shield against the counting of actions that increase the deficit.

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[941] S. 101, 101st Cong., 1st Sess., 135 Cong. Rec. S170, S425-29 (Jan. 25, 1989).

Section 202 covers (among other things) the classic example of a shift: moving a payday from one year into another.[942] Section 202 also covers, however, novel proposals to shift spending from one year to another such as "outlay management" schemes that empower an executive department official to shift the payment of bills from one year to another so as to keep outlay rates artificially lower than those that would naturally flow from a given amount of budget authority.

The evil Congress sought to remedy had to do with transfers from one year to the immediately adjacent fiscal year. Congress did not intend for this section to address the general issue of asset sales and prepayments (actions which collapse receipts from a long series of years into one year). (Note, however, that section 202 could apply to asset sales or prepayments that are shifted from one year into an adjacent fiscal year.) Section 251(a)(6)(I) of Gramm-Rudman-Hollings addresses asset sales and prepayments generally in defining the baseline for Gramm-Rudman-Hollings purposes.[943] Congress has addressed the issue of scoring assets sales annually in budget resolutions.[944]

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[942] *See, e.g.*, *Foley Opposes Payday Switch For Agencies*, Wash. Post, July 19, 1989, at A8, col. 1; Morgan, *Budget Plan for Agencies Includes Payday Shift*, Wash. Post, July 18, 1989, at A6, col. 5; *Floating Paydays*, Wash. Post, June 26, 1989, at A10, col. 1.

[943] *See supra* p. 399.

[944] *See* section 6 of the Concurrent Resolution on the Budget -- Fiscal Year 1990 (H. Con. Res. 106), H.R. Conf. Rep. No. 101-50, 101st Cong., 1st Sess. (1989); section 4 of the Concurrent Resolution on the Budget -- Fiscal Year 1989 (H. Con. Res. 268), H.R. Conf. Rep. 100-658, 100th Cong., 2d Sess. (1988); and sections 7 and 8 of the Concurrent Resolution on the Budget -- Fiscal Year 1988 (H. Con. Res. 93), S. Conf. Rep. 100-76, 100th Cong., 1st Sess. (1987).

Special Issue:

JURISDICTION OF THE BUDGET COMMITTEE

Three sources provide the basis for the Budget Committee's jurisdiction. First, section 102(a) amended rule XXV of the Standing Rules of the Senate, which now reads as follows (in relevant part):

> **(e)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4)[945] of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III[946] and IV[947] of that Act, and messages, petitions, memorials, and other matters relating thereto.**
>
> **(2) Such committee shall have the duty --**
>
> **(A) to report the matters required to be reported by it under titles III[948] and IV[949] of the Congressional Budget Act of 1974;**
>
> **(B) to make continuing studies of the effect on budget outlays[950] of relevant existing**

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[945] This is now section 3(4). *See supra* p. 11.

[946] *See supra* pp. 53-210.

[947] *See supra* pp. 211-245.

[948] *See supra* pp. 53-210.

[949] *See supra* pp. 211-245.

[950] Section 3(1) of the Congressional Budget Act defines "budget outlays." *See supra* p. 10.

and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

(C) to request and evaluate continuing studies of tax expenditures,[951] to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays,[952] and to report the results of such studies to the Senate on a recurring basis; and

(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.[953]

A second source of Budget committee Jurisdiction is the standing order on referral of budget process legislation. The Senate requires joint referral to the Budget and Governmental Affairs Committees of all legislation to change or modify the budget and impoundment control process. The Senate agreed by unanimous consent on August 4, 1977:

that legislation affecting the congressional budget process, as described below, be referred jointly to the Committees on the Budget and on Govern-

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[951] Section 3(3) of the Congressional Budget Act defines "tax expenditures." *See supra* p. 11.

[952] Section 3(1) of the Congressional Budget Act defines "budget outlays." *See supra* p. 10.

[953] STANDING RULES OF THE SENATE Rule XXV(e) (1988).

mental Affairs. If one committee acts to report a jointly-referred measure, the other must act within 30 calendar days[954] of continuous possession,[955] or be automatirally[956] discharged.

Legislative proposals affecting the congressional budget process to which this order applies

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[954] The Parliamentarian currently interprets this period to equate to 30 calendar days not interrupted by a sine die adjournment after the committee files its report with the Senate. In other words, "30 calendar days of continuous session" means 30 calendar days (including Saturdays, Sundays, legal holidays, and days in which the Senate stands in recess) unless the Senate adjourns sine die during those 30 days. If the Senate adjourns sine die during the 30 days, the 30 days begin counting again when the Senate next reconvenes.

Thus, on July 14, 1988, the Committee on Governmental Affairs ordered reported S. 2478, the Biennial Budget Act of 1988, sponsored by Senators Ford and Roth and others. On August 25, 1988, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate, under the authority of an order of August 11, 1988, providing for filing during the August recess. On that date, August 25, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on September 26, 1988, the Senate discharged the Committee on the Budget and placed the bill on the Legislative Calendar under General Orders. 134 CONG. REC. S13,263 (Sept. 26, 1988) (measures placed on the calendar).

[955] This is so in the original; it probably should read "session."

[956] This is so in the original; it should read "automatically."

are:

First. The functions, duties, and powers of the Budget Committee -- as described in title I[957] of the act;

Second. The functions, duties, and powers of the Congressional Budget Office -- as described in title[958] II[959] and IV[960] of the act);[961]

Third. The process by which Congress annually establishes the appropriate levels of budget authority,[962] outlays,[963] revenues, deficits[964] or surpluses, and public debt -- includ-

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[957] *See supra* pp. 25-33.

[958] This is so in the original; it should read "titles."

[959] *See supra* pp. 35-51.

[960] *See supra* pp. 211-245.

[961] This closing paren is placed so in the original; it has no corresponding opening paren.

[962] Section 3(2) of the Congressional Budget Act defines "budget authority." *See supra* p. 10-11.

[963] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[964] Section 3(6) of the Congressional Budget Act defines "deficit." *See supra* pp. 13-20.

ing subdivisions thereof. That process includes the establishment of:

> **mandatory ceilings on spending and appropriations;**
>
> **a floor on revenues;**
>
> **timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriations bills;[965] and**
>
> **enforcement mechanisms for the limits and timetables,**

all as described in titles III[966] and IV[967] of the act.[968]

Fourth. The limiting of backdoor spend-

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[965] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 12. For the text of 1 U.S.C. § 105, see *supra* note 25.

[966] *See supra* pp. 53-210.

[967] *See supra* pp. 211-245.

[968] This period is so in the original, even though the other paragraphs end in semicolons.

ing device[969] -- as described in title IV[970] of the act;

Fifth. The timetables for Presidential submission of appropriations and authorization requests -- as described in title VI[971] of the act;

Sixth. The definitions of what constitutes impoundment -- such as "rescissions" and "deferrals,"[972] as provided in the Impoundment Control Act, title X;[973]

Seventh. The process and determination by which impoundments must be reported to and considered by Congress -- as provided in the Impoundment Control Act, title X;[974]

Eighth. The mechanisms to insure Executive compliance with the provisions of

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[969] This is so in the original; it should read "devices."

[970] *See supra* pp. 211-245.

[971] *See supra* pp. 255-263.

[972] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

[973] *See supra* pp. 297-332.

[974] *See supra* pp. 297-332.

the Impoundment Control Act, title X[975] -- such as GAO review and lawsuits; and

Ninth. The provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act -- as set forth in title I thereof.[976]

The Senate requires joint referral to the Budget and Appropriations Committees of all special messages from the President on recommended rescissions and deferrals and all bills and resolutions introduced with respect to such messages under the senate resolution the referral of impoundment legislation.

S. Res. 45

Resolved,

1. That messages received pursuant to title X[977] of the Congressional Budget and Impoundment Control Act be referred concurrently to the Appropriations Committee, to the Budget Committee, and to any other appropriate authorizing committee.

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[975] *See supra* pp. 297-332.

[976] 123 Cong. Rec. S13,553 (Aug. 4, 1977).

[977] *See supra* pp. 297-332.

2.[978] That bills, resolutions, and joint resolu-

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[978] The Senate revised paragraph 2 on April 11, 1986. As originally agreed to on January 30, 1975, paragraph 2 read as follows:

> 2. That bills and resolutions introduced with respect to such messages shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 401 of the Congressional Budget and Impoundment Control Act and subject to sec. 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by sec. 401(c)(2) (A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, or resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.

S. Res. 45, 94th Cong., 1st Sess, § 2, 121 CONG. REC. S1,280 (Jan. 30, 1975).

In making the unanimous consent request to change this paragraph, Senator Rudman, acting on behalf of the Majority Leader, made the following statement:

> Mr. RUDMAN. Mr. President, Senate Resolution 45 adopted under a unanimous consent agreement on January 30, 1975, governs the referral of impoundment legislation in the Senate. Under this

(continued...)

tions introduced with respect to rescissions and deferrals[979] shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 410 of the Congressional Budget Impoundment Control Act

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[978](...continued)

> order, all special messages from the President pursuant to title X of the Congressional Budget and Impoundment Control Act and all bills and resolutions introduced with respect to such messages are referred concurrently to the Appropriations Committee, the Budget Committee, and to the appropriate authorizing committee. Section 1011 of the Impoundment Control Act provides that deferral disapprovals take the form of a simple resolution of one House. This is no longer a proper course of action, given the Supreme Court decision in INS versus Chadha that the one-House legislative veto is unconstitutional. Deferral disapprovals must now take the form of a bill or joint resolution.
>
> Given this, I ask unanimous consent that the second paragraph of the standing order governing the referral of matters dealing with rescissions and deferrals be revised, as of January 21, 1986, to allow the re-referral of bills and joint resolutions disapproving deferrals to the same committees now having jurisdiction over title X impoundment resolutions.

132 Cong. Rec. S4,157 (Apr. 11, 1986). Senator Rudman referred to Immigration and Naturalization Serv. v. Chadha, 462 U.S. 919 (1983).

In the absence of any objection, it was so ordered. *Id.*

[979] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

and subject to section 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by section 401(c)(2) (A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, resolutions, or joint resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.

3. If any Committee to which a bill or resolution has been referred recommends its passage, the Appropriations Committee shall report that bill or resolution together with its views and reports of the Budget and any appropriate authorizing committees to the Senate within:

A. the time remaining under the Act in the case of rescissions, or

B. within 20 days in the case of

deferrals.[980]

4. The 20 day period referred to herein means 20 calendar days; and for the purposes of computing the 20 days, recesses or adjournments of the Senate for more than 3 days to a day certain shall not be counted; and for recesses and adjournments of more than 30 calendar days, continuous duration or the sine die adjournment of a session, the 20 day period shall begin anew on the day following the reconvening of the Senate.[981]

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[980] Section 1011(1) defines "deferral of budget authority." *See supra* p. 301.

[981] The resolution appears at 121 CONG. REC. S1,280 (Jan. 30, 1975) and was adopted by reference at 121 CONG. REC. S1,302 (Jan. 30, 1975).

Special Issue:

THE BYRD RULE
ON EXTRANEOUS MATTER
IN RECONCILIATION

Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended by section 7006 of the Omnibus Budget Reconciliation Act of 1986 and section 205 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) sets forth the Byrd Rule:

SEC. 20001. (a) When the Senate is considering a reconciliation bill or a reconciliation resolution[982] pursuant to section 310[983] of the Congressional Budget Act of 1974, upon a point of order[984] being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution,[985] and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions

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[982] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[983] *See supra* pp. 176-196.

[984] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[985] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 257 (regarding section 303).

to said Committee as defined in subsection (d)[986] shall be deemed stricken from the bill and may not be offered as an amendment from the floor. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section, as well as to waive[987] or suspend the provisions of this subsection.

(b) No motion to waive[988] or suspend the requirement of section 305(b)(2)[989] of the Congressional Budget Act of 1974, as it relates to germaneness[990] with respect to a reconciliation bill or resolution, shall be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on a point of order

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[986] *See infra* pp. 597-604.

[987] *See, e.g.*, 132 Cong. Rec. S13,047 (Sept. 19, 1986).

[988] Section 904(c) of the Congressional Budget Act also requires the vote of 60 Senators to waive section 305(b)(2) generally. *See supra* p. 290.

[989] *See supra* pp. 136-153.

[990] For a discussion of germaneness, see *supra* note 304.

raised under that section,[991] as well as to waive or suspend the provisions of this subsection.

(c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.[992]

(d)(1)(A) Except as provided in paragraph (2),[993] a provision of a reconciliation bill or reconciliation resolution[994] considered pursuant to

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[991] Note that section 271(c) of Gramm-Rudman-Hollings also requires the vote of 60 Senators to appeal the ruling of the Chair on other points of order which themselves require 60 votes to waive. *See supra* p. 544.

[992] Section 205(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 extended this expiration date from January 2, 1988, to the current September 30, 1992. Pub. L. No. 100-119, 101 Stat. 754, 784 (Sept. 29, 1987). Contrast the expiration date of Gramm-Rudman-Hollings, found at section 275(b) of that Act (*see supra* p. 565), which section 106(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 extended to September 30, *1993*. Pub. L. No. 100-119, 101 Stat. 754, 780-81 (Sept. 29, 1987). No sound policy reason exists for the disparity. House staff, who objected to the Byrd Rule in general, objected to the further extension of the Byrd Rule in the conference for the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

[993] *See infra* pp. 601-603.

[994] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

section 310[995] of the Congressional Budget Act of 1974 shall be considered extraneous if such provision does not produce a change in outlays[996] or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected;

(B) any provision producing an increase in outlays[997] or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions;[998]

(C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title

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[995] *See supra* pp. 176-196.

[996] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[997] *See, e.g.*, 132 CONG. REC. S13,047 (1986); Senate Precedent PRL19860919-008 (Sept. 19, 1986) (LEGIS, Rules database).

Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[998] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

or provision shall be considered extraneous;[999]

(D) a provision shall be considered extraneous if it produces changes in outlays[1000] or revenues which are merely incidental to the non-budgetary components of the provision; and

(E)[1001] a provision shall be considered to be

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[999] Subsection (d)(3) provides exceptions to this paragraph. *See infra* pp. 603-604.

[1000] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[1001] Section 205(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subparagraph (E). Pub. L. No. 100-119, § 205(b), 101 Stat. 754, 784-85 (Sept. 29, 1987). The conference report accompanying that bill stated with regard to subparagraph (E):

> 6. Extraneous Provisions in Reconciliation Legislation
>
> *Current Law*
>
> Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), as amended by Section 7006 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), established a temporary rule in the Senate -- referred to as the "Byrd Rule" -- to exclude extraneous matter from reconciliation legislation. The rule specifies the types of provisions considered to be extraneous, provides for a point of order against the inclusion of extraneous matter in reconciliation measures, and requires a three-fifths vote of

(continued...)

extraneous if it increases, or would increase, net outlays,[1002] or if it decreases, or would decrease,

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[1001](...continued)
the Senate to waive or appeal the point of order. The rule expires on January 2, 1988.

Senate Amendment

The Senate amendment (Section 228) amends the Byrd Rule (which applies only in the Senate) to include in the definition of extraneous matter provisions which increase net outlays or decrease revenues during a fiscal year beyond those fiscal years covered by the reconciliation measure and which result in a net increase in the deficit for that fiscal year. The Senate amendment also extends the expiration date of the Byrd Rule to September 30, 1992.

Conference Agreement

The House recedes and concurs in the Senate amendment. This rule applies only in the Senate.

It is the intent of the conferees that expiration after the reconciliation period of a revenue increase or extension provided for in a reconciliation bill would not, of itself, be considered a revenue decrease for purposes of this provision. It could, however, contribute to a finding that a spending increase or a positive revenue decrease in that legislation violated this rule.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 65 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 765.

[1002] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution,[1003] and such increases or decreases are greater[1004] than outlay reductions or revenue increases resulting from other provisions in such title in such year.

(2) A provision shall not be considered extraneous under paragraph (1)(A)[1005] if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:

(A) the provision mitigates direct effects clearly attributable to a provision changing outlays[1006] or revenues and both provisions together produce a net reduction in the

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[1003] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[1004] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 435 (regarding section 311(a)).

[1005] Paragraph (1)(A) concerns provisions without deficit affect. *See supra* p. 597.

[1006] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

deficit;[1007]

(B) the provision will result in a substantial reduction in outlays[1008] or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution;[1009]

(C) a reduction of outlays[1010] or an increase in revenues is likely to occur as a result of the provision, in the event of

new regulation authorized by the provision or likely to be proposed,

court rulings on pending litigation, or

relationships between economic indices and stipulated statutory triggers pertaining to the provision,

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[1007] Section 3(6) of the Congressional Budget Act defines "deficit." *See supra* pp. 13-20.

[1008] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[1009] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[1010] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes;

(D) such provision will be likely to produce a significant reduction in outlays[1011] or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliable estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C)[1012] if

(A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or

(B) the provision states an exception to, or a special application of, the general provi-

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[1011] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[1012] *See supra* p. 598.

sion or title of which it is a part and such general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.[1013]

Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session)) applies the Byrd Rule to conference reports.

(c) When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution[1014] **pursuant to section 310**[1015] **of the Congressional Budget Act of 1974, upon --**

(1) a point of order being made by any Senator against extraneous material meeting

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[1013] Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), *amended by* the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), *and amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205, 101 Stat. 754, 784-85 (Sept. 29, 1987).

[1014] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[1015] *See supra* pp. 176-196.

the definition of subsections (d)(1)(A)[1016] or (d)(1)(D)[1017] of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and

(2) such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a confer-

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[1016] Subsection (d)(1)(A) concerns provisions without deficit effect. *See supra* p. 597.

[1017] Subsection (d)(1)(D) concerns provisions with deficit effects "which are merely incidental to the non-budgetary components of the provision." *See supra* p. 599.

ence report (or Senate amendment derived from such conference report by operation of this resolution), no further amendment shall be in order.[1018]

The Senate has struggled with the nature of a reconciliation bill. On the one hand, reconciliation presents an opportunity to bundle together in one bill much of the Congress's deficit reduction plan. Committees more willingly agree to take steps to reduce the deficit in areas within their jurisdiction if they know that other committees will also share the sacrifice.

As well, reconciliation allows the Congress to make changes in entitlement law by changing the underlying law. Without reconciliation, discretionary programs and the Appropriations process would be forced to bear a disproportionate burden of deficit reduction.

On the other hand, reconciliation is one of the few exceptions to the general rule in the Senate of unlimited debate. It is extremely difficult to amend the reconciliation bill. The Senate should be somewhat circumspect about what it allows itself to consider under these kinds of restrictions.

This tension between the good purposes of the reconciliation bill and the strict procedures governing it has led to efforts to prohibit what has been come to be known as "extraneous" matter on the bill.

Origins of the Byrd Rule

For example, as early as June 22, 1981, the bipartisan leadership offered an amendment to strike extraneous matter from the bill. On that day, during consideration of S. 1377, the Omnibus Reconciliation Act of 1981, Majority Leader Baker, offered the amendment for himself and Democratic Leader Robert C. Byrd, Budget Committee Chairman Domenici, and the ranking minority member of that committee, Senator Hollings. The debate that day included the following:

[1018] S. Res. 509, 99th Cong., 2d Sess, 132 CONG. REC. S16,415 (Oct. 16, 1986).

> Mr. BAKER. . . .
>
> Aside from its salutary impact on the budget, reconciliation also has implications for the Senate as an institution. So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain non-budgetary amendments to substantive law, and still be protected under the Budget Act. That notwithstanding, I believe that including such extraneous provisions in a reconciliation bill would be harmful to the character of the U.S. Senate. It would cause such material to be considered under time and germaneness provisions that impede the full exercise of minority rights. It would evade the letter and spirit of rule XXII.[1019] It would create an unacceptable degree of tension between the Budget Act and the remainder of Senate procedures and practice. Reconciliation was never meant to be a vehicle for an omnibus authorization bill. To permit it to be treated as such is to break faith with the Senate's historical uniqueness as a forum for the exercise of minority and individual rights. For principally these reasons, I have labored with distinguished minority leader, with the chairmen and ranking minority member of the Budget Committee, and with other committee chairmen to develop a bipartisan leadership amendment. This amendment will strike from the bill subject matter

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[1019] Rule XXII, regarding precedence of motions, includes the procedures for cloture. *See* STANDING RULES OF THE SENATE Rule XXII (1988).

which all these parties can agree is extraneous to the reconciliation instructions set forth last month in House Concurrent Resolution 115. What will remain in the bill is directly responsive to these instructions, has a budgetary savings impact, and plainly belongs in a reconciliation measure.

. . . .

Mr. ROBERT C. BYRD. Mr. President, if the reconciliation bill is adopted in its present form, it will do violence to the budget reform process. The reconciliation measure contains many items which are unrelated to budget savings. This development must be viewed in the most critical light, to preserve the principle of free and unfettered debate that is the hallmark of the U.S. Senate.

. . . .

The ironclad parliamentary procedures governing the debate of the reconciliation measure should by no means be used to shield controversial or extraneous legislation from free debate. However, language is included in the reconciliation measure that would enact routine authorizations that have no budget impact whatsoever. In other cases, legislation is included that makes drastic alterations in current policy, yet, has no budgetary impact.

. . . .

The reconciliation bill, if it includes such extraneous matters, would diminish the value of rule XXII. The Senate is unique in the way that it protects a minority, even a minority of one, with regard to debate and amendment. The procedures that drive the reconciliation bill set limits on the normally unfettered process of debate and amendment, because policy matters that do not have clear and direct budgetary consequences are supposed to remain

> . . . .
>
> The amendment offered by the majority leader and me omits several non budget related authorizations which should also be stricken from this bill. The fact that they were not included in this amendment should not be construed as accepting their inclusion in the bill.
>
> . . . .
>
> We have gone as far as we can go in this amendment, but we have not gone as far as we should go.[1020]

That day, the Senate agreed to the amendment by a voice vote.[1021]

Adoption of the Byrd Rule

On October 24, 1985, the Senate debated and adopted the Byrd Rule as an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985. Excerpts from the debate that day follow:

> AMENDMENT NO. 878
>
> Mr. BYRD. Mr. President, I send to the desk an amendment sponsored by myself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici.

[1020] 127 Cong. Rec. S6,664-66 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database).

[1021] *See id.*

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for himself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici, proposes an amendment numbered 878:

> At the appropriate place add the following: When the Senate is considering a reconciliation bill upon a point of order being made and sustained by any Senator, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters.

Mr. BYRD. Mr. President, the amendment speaks for itself. I would just say that we are in the process now of seeing, if we have not seen earlier, the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.

It was never foreseen that the Budget Reform Act[1022] would be used in that way.

So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate -- which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.

. . . .

Mr. President, the Senate is a deliberative body, and the reconciliation process is not a deliberative process. It not a deliberative process.[1023] Such an extraordinary process, if abused, could destroy the Senate's deliberative nature. Senate committees are creatures of the Senate, and, as such, should not be in the position of dictating to the Senate as is being done here. By including materal[1024] not in their jurisdiction or matter which they choose not to report as separate legislation to avail themselves of the nondeliberative reconciliation process, Senate committees violate the compact which created both them and the reconciliation process.

. . . .

The Senate must protect itself from this attack by its own committees, and, if necessary, the reconciliation bill will be amended to the extent necessary to achieve a preponderance of nonreconciliation matters and thus return this bill to a nonprivileged status.

[1022] Senator Byrd refers to the Congressional Budget Act.

[1023] This is so in the original; it should read "It is not a deliberative process."

[1024] This is so in the original; it should read "material."

Under the Budget Reform Act, other committees are mandated to make recommendations to the Budget Committee -- those committees make their recommendations to the Budget Committee, and the Budget Committee cannot add to or subtract from those instructions. It cannot amend the instructions. It cannot take from those instructions. It cannot add its own. It merely is to perform an administrative function -- and that is, to put all such recommendations into a single package which, when sent to the floor and taken up, is covered by an overall 20-hour time limit.

Normal cloture is but an infinite speck on the horizon as compared to this kind of cloture. Under normal cloture, we have 100 hours. Each Senator has 1 hour, theoretically. But under the restrictions of the Budget Act, 20 hours is all there is on a reconciliation bill.

We saw a moment ago how much time can be taken by one amendment. First there is the waiver. That is an hour. Then there is the amendment. That is 2 hours. Then there is an amendment to the amendment. That is another hour.

So, when all is boiled down, we have not only an abuse of the budget process by way of which other committees recommend to the Budget Committee any controversial bill they want -- repeal of the Hobbs Act, acid rain, you name it -- but also, when reconciliation comes to the floor, one or two Senators can offer an amendment, and consume at least 4 hours out of the 20 hours, if they want to take all the time that is available with regard to the waiver, the amendment, the amendment to the amendment, quorum calls, and so on.

So, Mr. President, I have offered this amendment, which is being cosponsored by the other Senators whose names have been stated, in order to correct this abuse in the future.

This provides that if a point of order is raised and upheld against extraneous matter in the reconciliation bill or matter that has been recommended by a committee whch[1025] does not have jurisdiction over the subject matter, then all such matter that is in the bill will fall and is not subject to being offered as a further amendment thereto.

. . . .

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. JOHNSTON. I say I support very strongly what the Senator is trying to do,but for purpose of setting the legislative record, I would like to get an understanding what happens in some instances.

First of all, according to the amendment when a matter is not within the jurisdiction of the committee or is extraneous to the instructions, that matter shall be deemed stricken from the bill. Now the question is: Where you have a whole provision, some of which is germane and some of which is not, does the Parliamentarian go through that and excise those sentences or clauses or subsections which are nongermane or extraneous and leave the rest, or does he excise the entire section as to which there is offending language?

[1025] This is so in the original; it should read "which."

Mr. BYRD. I am not sure I can answer that question with respect to what the Parliamentarian will do.

It might depend upon whether or not the language is divisible. I do not know. Perhaps the distinguished Senator would want to address his question to the Chair on this particular question.

Mr. JOHNSTON. When it says, "Any part of a bill not in the jurisdiction of the committee," I am just wondering what the intent of the authors is with respect to "any part of a bill." Does it mean the entire portion of the bill reported by a committee, or just as the offending extraneous or nongermane language?

Mr. BYRD. If it is any part of the bill that is not within the jurisdiction of the reporting committee, it would fall. If it is not within the jurisdiction of the -- --

Mr. JOHNSTON. When you say "part," if you have, let us say, a 30-page section of legislation as to which there is one subsection that is not germane, would you simply knock out the subsection or would you take the whole 30-page section?

Mr. BYRD. I think the Senator may be confusing -- let me say this: the Senator is talking about germaneness?

Mr. JOHNSTON. The Senator is correct.

Mr. BYRD. And also talking about legislation that has been reported by a committee which does not have jurisdiction over the subject matter. So there are two different things.

The language, I think, would explain the answer. Any part of the bill not in the jurisdiction of the reporting committee, whether it is germane or not, any part that is not within the jurisdiction of the reporting committee, would fall.

Mr. JOHNSTON. For example, we usually put a severability clause in legislation which means that if any section of the bill is declared unconstitutional by the Court, then the rest of the bill does not fall.

I am asking, I guess, whether you intend for there to be, in effect, a severability clause here, or whether the whole section as to which there is any offending language falls.

Mr. BYRD. I say any part of the bill that is not within the jurisdiction of the reporting committee would fall.

Mr. JOHNSTON. You can take out that part and in effect rewrite the bill by striking sentences, clauses, subsections.

Mr. BYRD. That are not within the jurisdiction of the reporting committee.

. . . .

Mr. JOHNSTON. My final question has to do with the meaning of the word "extraneous" and what your intention is as to how that is interpreted. Frequently, in fact, usually directions are given by the Budget Committee in the very broadest of terms, and the authorizing committees report legislation which is detailed and which, in one sense, might contain matter that is extraneous. It might be germane to the instructions, but extraneous in the sense that it is not specifically called for within the four corners of the instructions from the Budget Committee to the authorizing committee. Could the Senator tell me what he means by "extraneous" in this context of that question?

. . . .

Mr. JOHNSTON. If I may repeat it. The question is as to the meaning of the word "extraneous," as used in this amendment. . . .

. . . . But the question is: What is the meaning of the word "extraneous"? Do you mean that it must be contained within the four corners of the instructions from the Budget Committee, or may the Budget Committee supplement those instructions by filling out the spirit of the instructions within the jurisdiction of that committee and all within the germaneness rule, if the Senator understands the question?

Mr. BYRD. The word "extraneous" here would be interpreted in the future just as it is presently being interpreted. And I understand that, at the present time, "extraneous," in the context, is determined by whether or not the language contributes to reducing the deficit and balancing the budget; otherwise, it is extraneous. So the same interpretation that is now given to the word "extraneous" would continue to be given.

Mr. JOHNSTON. So, for example, a committee would be able to go beyond the instructions and save more money?

Mr. BYRD. Well, if such language does not serve to balance the budget or to reduce the deficit, the language would be extraneous -- then it would be up to the Chair to determine whether or not the point of order is well taken.

. . . .

Mr. DOMENICI. Will the distinguished minority leader yield?

Mr. BYRD. Yes.

Mr. DOMENICI. First, let me ask the distinguished minority leader a question and then I would like to comment on what I think has developed and evolved as a definition of "extraneous material."

As I read the amendment, I say to the distinguished minority leader, the second part of this amendment -- "No motion to waive germaneness on reconciliation bills shall be agreed to unless," -- I understand that this applies to an amendment offered on the floor by a Senator. Is the Senator from New Mexico correct?

Mr. BYRD. The Senator is correct and I was incorrect.

. . . .

Mr. DOMENICI. Mr. President, I wish to ask one further question of the principal sponsor and drafter of the amendment, the distinguished minority leader. I wonder if he intended to include in the second part of the amendment, "no motion to waive germaneness." I wonder if he wanted that to be just germaneness, whereas before, when we were speaking of striking what a committee sent us, the Senator used two descriptions: he used germaneness and he used extraneous. It appears to me he might want, in the second part, "no motion to waive germaneness or extraneousness," and then provide for the supermajority. Otherwise, you make extraneous material subject to a point of order, but the point of order could be waived by a simple majority.

Mr. BYRD. Mr. President, the distinguished Senator from New Mexico makes an excellent point. I agree with him and think it should be so strengthened and I modify my amendment so to accomplish that purpose.

Mr. DOMENICI. Mr. President, will the distinguished minority leader permit me to respond to what "extraneousness" means thus far in its evolution in the Senate? Let me suggest that, going back to 1981, we have evolved these four definitions, and I believe they are used by minority and majority members of the committee now. I would just read them quickly:

> One, provisions that have no direct effect on spending and which are not essential to achieving the savings.
>
> Two, provisions which increase spending and are not so closely related to saving provisions that they cannot be separated.
>
> Three, provisions which extend authorizations without saving money, and which are not so closely related to saving provisions that they cannot be separated.
>
> Four, provisions which invade another committee's jurisdiction, whether or not they save money.

And I am not saying that is all inclusive, but, up to this point, that is what we have been using. . . .

The PRESIDING OFFICER. The minority leader has a right to modify his amendment. If he will send it to the desk, the amendment will be so modified.

The amendment, No. 878, as modified, reads as follows:

> At the appropriate place add the following:
>
> When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which supermajority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported from a committee.

Mr. JOHNSTON. Will the Senator from West Virginia yield for just one more question?

Mr. BYRD. Yes.

Mr. JOHNSTON. . . .

My question is, Can you appeal the ruling of the Chair, make a point of order, that a matter is not extraneous, or is germane, have the Chair rule against you and then reverse that on a simple majority vote, and overruling the ruling of the Chair? Or do you mean for that also to be three-fifths?

Mr. BYRD. Would the Senator ask that question again?

Mr. JOHNSTON. The Parliamentarian strikes from the bill a matter which is extraneous or which is nongermane. I am interested in the matter, and I make a point of order that the matter is not extraneous or is germane to the bill. The Parliamentarian, the Chair, rules against me. I appeal the ruling of the Chair. Can we thereby overturn the Chair by simple minority vote?

Mr. BYRD. No.

Mr. JOHNSTON. Can you challenge the ruling of the Chair at all? If so, how?

Mr. BYRD. The Senator can appeal the ruling of the Chair.

Mr. JOHNSTON. Appeal the ruling of the Chair, but what vote would that require?

Mr. BYRD. Three-fifths.

Mr. JOHNSTON. I think in view of the earlier answer that this motion to waive germaneness applies only to amendments offered on the floor -- it would apply to both -- and committee action?

Mr. BYRD. Yes.

Mr. JOHNSTON. The automatic ruling out as well as an amendment offered on the floor?

Mr. BYRD. That is correct.

Mr. DOMENICI. I think the distinguished sponsor had answered previously that the supermajority requirement for a waiver applied only to committee reported language, but when we exchanged views here, he clearly indicated that it applies to waivers of the germaneness requirement or the extraneous language point of order or appeals to rulings of the Chair.

Mr. JOHNSTON. I wonder if this language is specific enough to apply to an appeal from the ruling of the Chair. It speaks in terms of a motion to waive germaneness of reconciliation. I think it might be rewritten a bit to make that clear.

Mr. BYRD. Mr. President, that is the intent of the sponsor. If I need to modify it to make it clear, I will do so.

Mr. McCLURE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. McCLURE. I think the Senator from Louisiana has raised perhaps a good point because we have interchangeably talked here of the opportunity of a Member who does not like a ruling of the Chair being able to appeal the ruling of the Chair, and we have not clearly distinguished that from the opportunity to make a motion to suspend pursuant to the Budget Act. Maybe the answer to that question is to make certain that either an appeal from the ruling of the Chair or a motion with respect to germaneness should have to have a three-fifths vote.

I think that would make it clear because in our practice here earlier today it was not an appeal from the ruling of the Chair. As a matter of fact, it was not even a ruling of the Chair. But I think the Senator is very clear in his explanation that it is intended to cover both. Perhaps we ought to make a further statement in the amendment to make certain that it states that.

. . . .

Mr. DOMENICI. Mr. President, I want to compliment the distinguished minority leader for the amendment. I think we have a suggestion for a further modification. We will talk with the Senator from Louisiana. We are working on it. I think there are a couple of words we ought to add.

. . . .

Mr. DOMENICI. Mr. President, as I was saying, I commend the distinguished minority leader. Frankly, as the chairman of the Budget Committee, I am aware of how beneficial reconciliation can be to deficit reduction. But I am also totally aware of what can happen when we choose to use this kind of process to basically get around the Rules of the Senate as to limiting debate. Clearly, unlimited debate is a prerogative of the Senate that is greatly modified under this process.

I have grown to understand that this institution, while it has a lot of shortcomings, has some qualities that are rather exceptional. One of those is the fact it is an extremely free institution, that we are free to offer amendments, that we are free to take as much time as this U.S. Senate will let us to debate, and have those issues thoroughly understood both here and across this country.

I do not like to see committees put amendments on reconciliation that they have not been able to pass for years, or in the process of doing reconciliation just add untold numbers of amendments in order to be immune from unlimited debate.

. . . .

Mr. EVANS. Mr. President, I commend the majority and minority leaders, and the chairman and ranking member of the Budget Committee for what they are attempting to do. I think it represents a major step forward in correcting an evil we fell into today which is being well recognized. . . .

. . . . As I understand the language, and the minority leader . . . can correct me if I am in error, do I understand correctly that the proposal made, if it had been in the law prior to today, would have meant that the textile bill as proposed would have been ruled out of order from this proposal?

Mr. BYRD. If a point of order were made against that bill with respect to germaneness and if the point of order were upheld, then it would take a three-fifths vote to overrule the Chair, under my amendment.

. . . .

Mr. EVANS. I thank the minority leader.

Let me add briefly that this is a splendid move forward. If there had been any real progress made today, perhaps this is the best progress we have made for the long-term future of the Senate.

. . . .

Mr. BYRD. . . .

The amendment (No. 878), as further modified, is as follows:

> At the appropriate place add the following: "When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator, and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. This provision may be waived by three-fifths of the Senators duly chosen and sworn. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported by a committee."

Mr. DOLE. Mr. President, I want to thank my colleague. I think the debate we have had on this amendment has been very helpful. As I look at the votes today, if it had been in effect now, this amendment would not be pending and that would be an improvement on the reconciliation bill. It was never intended as the answer for every amendment whether it is the Hobbs Act, abortion, prayer in school, or anything else. Ordinarily, you just wait for the reconciliation bill to come up every year and put anything on reconciliation. Obviously, that was not the purpose of the Budget Act.[1026]

The Senate went on to adopt the Byrd amendment by a unanimous vote of 96-0.[1027]

Application of the Byrd Rule to Conference Reports

On December 19, 1985, Senator Simpson, on behalf of Senators Armstrong, Roth, and Domenici, introduced a Senate Resolution -- S. Res. 286 -- to apply the Byrd Rule to conference reports. As agreed to that day, that resolution read as follows:

> S. RES. 286
>
> RESOLVED, That when the Senate is considering a conference report or House amendment with respect to a reconciliation bill or reconciliation resolution pursuant to section 310 of the Budget Act, upon a point of order being made by any Senator against extraneous material meeting the definition of subsections (d)(1)(A) and (d)(1)(D) of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and such point of order is sustained, any part of such report or amendment containing such material shall be deemed stricken, but it shall be in order to continue consideration of the remainder under the Rules and practices of the Senate and applicable law. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this resolution, as well as to waive or

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[1026] 131 Cong. Rec. S14,032-37 (Oct. 24, 1985).

[1027] *Id.* at S14, 038. Senators Eagleton, Hatfield, Simon, and Stennis were necessarily absent. *Id.*

suspend the provisions of this resolution.

> The provisions of this resolution shall remain in effect until the date of termination of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985.[1028]

Senator Roth described the resolution:

> Mr. ROTH. Mr. President, the purpose of this resolution is to remedy a possible unintended result of the Byrd amendment to the reconciliation bill, section 1201[1029] of the Consolidated Omnibus Budget Reconciliation Act of 1985.
>
> That provision imposes a discipline upon this body which is not imposed on the other body. Basically, it requires that Senators not place extraneous provisions in reconciliation bills and resolutions.
>
> However, if Members of the other body are free to load up their bills and resolutions with extraneous provisions, I fear that our body will be at a disadvantage within respect to the other body. Since we cannot tell the other body how to conduct its business, the solution is to create a new Senate procedure for handling extraneous material originating in the other body and coming to us as part of a House amendment or a conference report. The situation is analogous to that in the other body when we send provisions to them which would violate their rule on germaneness if offered there rather than here.
>
> The other body's response to that situation has

[1028] 131 CONG. REC. S18,255 (Dec. 19, 1985).

[1029] This is so in the original. Senator Roth meant section 20001.

been to adopt clauses 4 and 5 of rule XXVIII of the House rules.[1030] The remedy proposed here is similar.

[1030] Clauses 4 and 5 of House Rule XXVIII provide:

4. (a) With respect to any report of a committee of conference called up before the House containing any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House, and which --

(1) is contained in any Senate amendment to that measure (including a Senate amendment in the nature of a substitute for the text of that measure as passed by the House) accepted by the House conferees or agreed to by the conference committee with modification; or

(2) is contained in any substitute agreed to by the conference committee; it shall be in order, at any time after the reading of the report has been completed or dispensed with and before the reading of the statement, or immediately upon consideration of a conference report if clause 2(c) of this rule applies, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in the report.

For the purposes of this clause, matter which --

(A) is contained in any substitute agreed to by the conference committee;

(B) is not proposed by the House to be included in the measure concerned as passed by

(continued...)

[1030](...continued)
the House; and

(C) would be in violation of clause 7 of Rule XVI if such matter had been offered in the House as an amendment to the provisions of that measure as so proposed in the form passed by the House;

shall be considered in violation of such clause 7.

(b) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(c) Notwithstanding the final disposition of any point of order made under paragraph (a), or of any motion to reject made pursuant to a point of order under paragraph (b), of this clause, it shall be in order to make further points of order on the ground stated in such paragraph (a), and motions to reject pursuant thereto under such paragraph (b), with respect to other nongermane matter in the report of the committee of conference not covered by any previous point of order which has been sustained.

(d) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be --

(continued...)

[1030](...continued)

(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected; or

(2) if the last sentence of paragraph (a) of this clause applies, whether to insist further on the House amendment.

If all such motions to reject are defeated, then, after the allocation of time for debate on the conference report as provided in clause 2(a) of this Rule, it shall be in order to move the previous question on the adoption of the conference report.

5. (a)(1) With respect to any amendment (including an amendment in the nature of a substitute) which --

(A) is proposed by the Senate to any measure and thereafter --

(i) is reported in disagreement between the two Houses by a committee of conference; or

(ii) is before the House, the stage of disagreement having been reached; and

(B) contains any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House;

(continued...)

[1030] (...continued)
it shall be in order, immediately after a motion is offered that the House recede from its disagreement to such amendment proposed by the Senate and concur therein and before debate is commenced on such motion, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in such amendment proposed by the Senate.

(2) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(3) Notwithstanding the final disposition of any point of order made under subparagraph (1), or of any motion to reject made pursuant to a point of order under subparagraph (2), of this paragraph, it shall be in order to make further points of order on the ground stated in such subparagraph (1), and motions to reject pursuant thereto under such subparagraph (2), with respect to other nongermane matter in the amendment proposed by the Senate not covered by any previous point of order which has been sustained.

(4) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the motion to recede and concur shall be considered as rejected, and further motions --

(A) to recede and concur in the Senate
(continued...)

[1030](...continued)

amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(b)(1) With respect to any such amendment proposed by the Senate as described in paragraph (a) of this clause, it shall not be in order to offer any motion that the House recede from its disagreement to such Senate amendment and concur therein with an amendment, unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration.

(2) Immediately after any such motion is offered and is in order and before debate is commenced on such motion, it shall be in order to make a point of

(continued...)

[1030](...continued)
order that nongermane matter, as described in subparagraph (1) of paragraph (a) of this clause, which shall be specified in the point of order, is contained in the language of the Senate amendment, as proposed by to be amended by such motion, copies of which are then available on the floor.

(3) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(4) Notwithstanding the final disposition of any point of order under subparagraph (2), or of any motion to reject made pursuant to a point of order under subparagraph (3), of this paragraph, it shall be in order to make further points of order on the ground stated in subparagraph (1) of paragraph (a) of this clause, and motions to reject pursuant thereto under subparagraph (3) of this paragraph, with respect to other nongermane matter in the language of the Senate amendment, as proposed to be amended by the motion described in subparagraph (1) of this paragraph, not covered by any previous point of order which has been sustained.

(5) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this paragraph, the motion to recede and concur in the Senate amendment shall be considered as rejected, and further motions --

(continued...)

[1030](...continued)

(A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur in the Senate amendment with an amendment as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(c) If, on a division of a motion that the House recede and concur, with or without amendment, from its disagreement to any such Senate amendment as described in paragraph (a)(1) of this clause, the House agrees to recede, then, before debate is commenced on concurring in such Senate amendment, or on concurring therein with an amendment, it shall be in order to make and dispose of points of order and motions to reject with respect to such Senate amendment in accordance with applicable provisions of this clause

(continued...)

It would permit a point of order to be raised against the extraneous material in House amendments or conference reports. With respect to a House amendment, if such point of order is sustained, the effect will be like that of a successful motion to strike out the offending language, and the Senate will be able to consider and act upon the remainder, if any, of the amendment.

With respect to a conference report, if such point of order is sustained, the effect will be like that under rule XXVIII of the House rules; the Senate will be able, for example, to request further conference or to insist on its disagreement or to recede and concur in the House amendment with an amendment incorporating the remainder of the text of the conference report or any other permissible variation which does not revive the provision deemed stricken by the successful point of order.

It should be noted that points of order may be made only with respect to two of the four categories of extraneous material in section 1201. This is because the two categories omitted are not applicable to matters to be transacted between the Houses. Moreover, it is intended that the remaining two categories be applied without reference to any instructions that may have been given to committees. Thus points of order may be raised against a provision which does not; produce a change in outlays or revenues or which produces a change which is merely incidental to the non-

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[1030] (...continued)
and to effect final determination of these matters in accordance with such provisions.

RULES OF THE HOUSE OF REPRESENTATIVES Rule XXVIII(4) & XXVIII(5) (1988).

> budgetary components of the provision.
>
> I believe that this resolution is a necessary step to protect the prerogatives of this body. With this protection, the Byrd amendment will be able to achieve a necessary reform without disadvantaging this body.[1031]

The Senate then agreed to the resolution by a voice vote.[1032]

On October 16, 1986, Senator Simpson introduced another Senate Resolution, on behalf of Senators Roth, Domenici, and Chiles, modifying the earlier resolution. That resolution read as appears above.[1033]

Again, Senator Roth explained the resolution:

> Mr. ROTH. Mr. President, on December 19, 1985, the Senate adopted Senate Resolution 286, which I authored. The purpose of Senate Resolution 286 was to extend the prohibition against extraneous matter in reconciliation bills and resolutions, popularly known as the Byrd rule after its distinguished author, to House language coming over to us either in a conference report or as a House amendment. But for Senate Resolution 286, the Senate would have been in a position of imposing a much needed discipline on itself while facing the prospect that the House could load down reconciliation bills and resolutions with all kinds of extraneous matter.
>
> When the Senate considered Senate Resolution

[1031] 131 Cong. Rec. S18,255 (Dec. 19, 1985).

[1032] *See id.*

[1033] *See supra* pp. 604-606.

286, I noted its similarity to rule XXVIII of the House rules by which the House seeks to protect itself against Senate provisions that would violate House rules on germaneness if offered there. Under Senate Resolution 286, when the point of order against extraneous matter is made and sustained, the offending language is deemed stricken and the Senate is permitted to consider the remainder "under the rules and practices of the Senate and applicable law."

In contrast, in the analogous situation under rule XXVIII of the House rules, after the offending language is deemed stricken, the opportunity to debate and to make further amendments is restricted under the rule and the practices of the House. In practical terms this means that one making a point of order does not have to overcome the burden that his or her success might unravel all the negotiations that led up to the conference report or amendment in question.

Therefore, on reflection, it is my considered opinion that Senate Resolution 286 needs to be amended so that successful points of order intended to surgically remove offending language, do not provide the occasion for unraveling the remaining language of conference reports which Senate conferees have worked out in conference.

The amendment to Senate Resolution 286 would preserve the original purpose of that resolution but would further refine the implementation, in the case of conference reports or House amendments, by limiting debate and, in the case of conference reports, by precluding amendments.

Conference reports as such are not subject to amendment. It would be highly inappropriate, therefore, to allow such language to become amendable once extraneous matter is removed by a successful point of order. Unfortuantely,[1034] that result would occur without the adoption of the pending resolution because a conference report falls as a matter of parliamentary law when a successful point of order is made against it. And when the conference report falls, the last amendment or amendments are before this body subject to further debate and further action.

But this result is contrary to the special purpose of Senate Resolution 286. Such a result would make it more difficult to police our policy against extraneous matter. For if a Senator desiring to make a point of order against extraneous matter realizes that his success could cause the entire conference agreement to become amendable, then he would be inclined to go forward guided more by his position on the substance of the conference agreement than by his desire to enforce Senate policy on extraneous matter. That would be unfortunate.

The pending resolution would change that result. It would allow a successful point of order to excise the offending language in a conference report and would, in effect, treat the remaining language in the same way we treat conference reports, that is, as not subject to amendment.

House amendments, like conference reports, would be subject to the provision limiting debate. However, House amendments would be subject to further amendment since, unlike a conference report, they have not been agreed to by the Senate.

The resolution also treats the situation where the House has sent us an amendment containing extraneous matter and the Senate is considering a Senate

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[1034] This is so in the original; it should read "Unfortunately."

> amendment to the House amendment containing such extraneous matter. This kind of Senate amendment is included within the phrase "amendment between the Houses" in the pending resolution. This kind of Senate amendment to a House amendment would be subject to the same procedure as would the House amendment.
>
> It should also be noted that more than one point of order may be made against a conference report or amendment between the Houses. In the case of Senate consideration of conference reports, it should be noted that a second point of order would be made against the resulting Senate amendment created by operation of this resolution upon a successful point of order being made. It cannot be made against the conference report because it is no longer before the body. That is why the phrase "Senate amendment derived from such conference report by operation of this resolution" is included in the resolution; such amendments are basically treated under the procedure for conference reports. This means they are not amendable.
>
> In my opinion, the procedural refinements contained in the pending resolution are necessary to implement the original purpose of Senate Resolution 286 and should be adopted.[1035]

The Senate then agreed to that resolution by a voice vote.[1036]

[1035] 132 CONG. REC. S16,415 (Oct. 16, 1986).

[1036] *See id.*

The New Stringency

On October 13, 1989, the Senate evinced a new stringency in the application of the Byrd Rule. Majority Leader Mitchell, on behalf of himself and Senators Dole, Sasser, Domenici, Byrd, Bentsen, and Packwood, offered a leadership amendment to strike extraneous provisions from the reconciliation bill (S. 1750). The amendment went further than the text of the Byrd Rule in its definition of extraneousness. The debate proceeded as follows:

> Mr. MITCHELL. Mr. President, the purpose and effect of this amendment may be summed up in a single sentence. The purpose of the reconciliation process is to reduce the deficit. I repeat, the purpose of the reconciliation process is to reduce the deficit.
>
> The amendment is lengthy, consisting of many pages, words, and numbers, but it has that fundamental objective. As I said when I addressed the Senate a week ago Thursday, the reconciliation process has in recent years gone awry. The special procedures included in the Budget Act as a way of facilitating deficit reduction items became a magnet to other legislation which is unrelated to the objective of reducing the deficit.
>
> . . . .
>
> But it is time now to restore the reconciliation process to its original objective. That is what this amendment does. It asks sacrifice of every Senator. It asks discipline of every Senator. It asks that the regular legislative process be restored to the dignity it once had.
>
> . . . .
>
> Mr. DOLE. . . .

. . . .

The bottom line, as I see it, is discipline. Do we have the will to be responsible, to really reduce the Federal deficit or do we undercut the process by piling on important programs, taxes, and other legislative goodies that cost the taxpayers millions in the name of deficit reduction? Many of these provisions have never even had a hearing, never had a hearing, and not one witness from anyplace came in to testify for or against most of the provisions.

. . . .

So [the Caucus] in affect directed the leader to have the staff put together something that went beyond the Byrd rule; something that extended -- I guess you would call it an extension of the Byrd rule. . . .

. . . .

I believe the proposal such as the rural health care package and others are meritorious in their own right and can withstand the test of the normal legislative process, and they should. Reducing the deficit is a priority; the deficit keeps climbing, and we have not had much success in getting it down. I am not certain everybody in America understands all the inside baseball that goes on around here, whether they understand reconciliation and conference committees and motions to strike, but I do believe the American people recognize responsibility when they see it, and tonight they are seeing responsibility in action.

That is the whole purpose of this amendment. The authors will oppose any effort to add back individual provisions, and I certainly urge our colleagues to support those efforts. That does not mean that a provision that some Senator might have -- and I will speak to this side of the aisle -- will not be picked up in another revenue bill or in a separate piece of legislation. We are not here to pass judgment on what Senators may have in mind as far as legislation is concerned. On this package, it is going to be a reconciliation bill in the finest sense of the word.

. . . .

Mr. SASSER. Mr. President, with this amendment we are firing a shot, I believe, for fiscal responsibility, a shot that I think will be heard throughout the corridors of this Congress. . . . With this amendment, we are putting a deficit reduction bill back in the category of being a deficit reduction bill. It is an amendment that sets this body's priorities straight.

What we are seeking to do is to remove from this reconciliation vehicle, all extraneous matter, everything that does not either reduce Federal spending or raise Federal revenues will be stricken. That is the purpose of a reconciliation bill. Extraneous matters have been accumulating on these reconciliation bills now for a number of years, to the point that they are on the verge of sinking the reconciliation bill, and in so doing, defeating the budget process.

At some point in the not too distant future, if we continue down the path that we have been going, the Parliamentarian, on a point of order, will be forced to rule that a so-called reconcilation[1037] bill is not a reconcilation[1038] bill at all, that it is simply a vehicle for so much extraneous matter that deficit reduction has become a subordinate and wholly incidential[1039] purpose for which a so-called reconciliation bill will be offered in the future. I do not say that to impugn the worth of many extraneous matters on this reconciliation bill.

[1037] This is so in the original; it should read "reconciliation."

[1038] This is so in the original; it should read "reconciliation."

. . . .

Mr. DOMENICI. . . .

. . . .

There are a few things about the U.S. Senate that people understand to be very, very significant. One is that you have the right, a rather broad right, the most significant right, among all the parliamentary bodies in the world to amend freely on the floor. The other is the right to debate and to filibuster.

When the Budget Act was drafted, the reconciliation procedure was crafted very carefully. It was intended to be used rather carefully because, in essence, Mr. President, it vitiated those two significant characteristics of this place that many have grown to respect and admire. Some think it is a marvelous institution of democracy, and if you lose those two qualities, you just about turn this U.S. Senate into the U.S. House of Representatives or other parliamentary body.

. . . .

. . . . If the House Rules Committee clears a bill, it makes no difference to them whether it is on reconciliation or freestanding. They set the rules for debate in that institution then and there. We do not have that. The only Rules Committee we have is the floor of the U.S. Senate and a relatively new one called reconciliation.

[1039] This is so in the original; it should read "incidental."

Today we have met the enemy. As Pogo says "We met the enemy and he is us." We are going to use the process available under the Budget Act to strip from this bill not only those matters which the Parliamentarian would call extraneous but also those which were never intended because they are not pure deficit reduction matters. Thus, they are broader than the Byrd rule, irrelevant and extraneous,and we are going to strike them.

. . . .

Mr. GORTON. . . .

First, we are doing what we ought to do. As the distinguished majority leader said earlier during the course of this debate, the purpose of a reconciliation bill is to reduce the budget deficit. . . .

Second, and equally important, by this course of action this evening we are not doing what we ought not to do. The distinguished minority leader pointed out that many of the extraneous elements in this resolution before this amendment include good legislation. From a brief review of that legislation, I know this Senator agrees with well over half of those pieces of substantive legislation. But all of them, whether this Senator agrees with them or not, share one feature in common: They have not been debated on the floor of the Senate and cannot be effectively debated as a part of a reconciliation bill. They cannot effectively be amended as a part of a reconciliation bill.

Thus, their inclusion, whether they are good, bad, or indifferent, would utterly destroy the very purpose of the Senate of the United States, as so eloquently described by the President pro tempore last Sunday. It is absolutely essential that, even with this legislation, we have the right to debate and the right to amend.

. . . .

Mr. RUDMAN. . . .

I would say it was informally advanced beyond the Byrd rule by what we have now adopted. I guess I would call it an informal Dole-Mitchell-Sasser-Domenici-Packwood-Bentsen amendment which simply said: If it does not raise revenue or save money, we do not want it in here.

I wish the distinguished President pro tempore might offer that as a formal amendment. It would save us a lot of grief in the coming years.

Mr. President, there ought to be a lesson in what happened here today and yesterday and last week. . . .

. . . .

The net result of that, Mr. President, is what the distinguished President pro tempore said on Sunday about this body, which has the ability to debate and amend and consider legislation. I will tell my colleagues, if there is a great disappointment to this Senator in my 8 years here, it is that some of the most important issues we can discuss we never have the chance to debate and amend on this floor because we are totally immersed in this budget process from January to December; maybe this year shorter.

. . . .

Mr. BYRD. Mr. President, John Stuart Mill said, "On all great subjects, much remains to be said." This is a great subject, the reconciliation bill, and much remains to be said. . . .

I have seen the Senate many times when it gave me reason to be concerned about its future. I have also seen it on some occasions when it gave me reason to be proud. . . .

Tonight I think that we should pause to reflect upon this institution to which Gladstone, that great English statesman who lived during the long reign of Queen Victoria and who was Prime Minister of England four times, referred when he spoke of the U.S. Senate as "that remarkable body, the most remarkable of all the inventions of modern politics." That is what this institution is. . . .

. . . .

The U.S. Senate is the centerpiece of the great compromise. It is the masterpiece of the men who wrote the Constitution. . . . They were wise men, and they saw the need for a system of checks and balances, and the Senate was the balance wheel of that system. The Senate was given extraordinary powers . . . . But the basic cement that was the very foundation of this balance wheel were two in number, the right to debate and the right to amend. The other body may amend, but the other body may also issue a rule which, if agreed to, will confine amendments to one in number or two in number or three or none and direct that a certain Member will be the only Member who will offer that one amendment or those two amendments.

The House has the previous question, but not the Senate. The Senate allows unrestricted debate.

We now and then restrict ourselves through the cloture motion, which first was created in 1917. But the right to debate and to amend is why we should be proud of this institution, why we should revere it.

The Constitution, in section 7 of article I, says that measures that raise revenues shall begin in the House of Representatives, but it also says that the Senate may propose or concur with amendments as on other bills. So there is a constitutional right reposed in the Senate to amend ever[1040] revenue bills.

The Senate and the House have their tensions between them, as do the executive and the legislative, all these with the built-in tensions that the forefathers took great care to fashion in order to make this a system of checks and balances.

But in the reconciliation bill, we were about to inflict our own mortal wound, as Brutus did with the same dagger that he had plunged into Caesar's blood, bringing a bill of such magnitude here which contained scores of measures, on any one of which the Senate should have had the opportunity to debate at full length and to amend. What hidden pieces of legislation might come to the floor in a package of this size? What hidden legislation we might vote upon and come to regret at a later time?

This is an institution for the protection of minorities, an institution in which the minority can put a bridle on the majority for at least a while until the country can be awakened to the mistakes that might otherwise be visited upon the people. We should not view this Senate lightly, and never should be party to weakening this institution, with which we have been blessed.

[1040] This is so on the original; it should read "even."

Yes, there were limitations on debate in 1919 in the League of Nations debate, and in 1926 in the World Court debate, limitations through the cloture rule, but their price was substantial concessions by the majority.

The Senate is . . . the only forum in which minorities are protected against the sudden waves of passion that might sweep over the Nation.

A reconciliation bill is a super gag rule, the foremost ever created by this institution. Normal cloture is but an infinite speck on the distant horizon when compared with a reconciliation bill. Cloture may be invoked on any measure, motion, or matter. Sixteen Senators sign a cloture petition; parts of 3 days transpire before cloture is invoked; and when it is invoked, it is invoked on only one matter or one measure or one motion. Then there are 30 hours of debate. The provision is within that rule that that time may be extended by a three-fifths majority vote to whatever -- 40 hours, 50, 75 or 100 hours. But not so with reconciliation. Reconciliation comes to the floor. There is no opportunity to debate a motion to proceed, whereas, under cloture, an attack can be made by the minority even on the motion to proceed. The minority ought to be zealous in protecting that right; the minority may be on this side of the aisle tomorrow, as it was yesterday.

Under reconciliation there is no motion provided to extend that time beyond 20 hours, but there is a motion that is nondebatable and can be invoked by only a majority of Members to reduce the time, and it can be reduced to 10 hours or to 5 hours or to 2 hours or to 1 hour without debate. Only a majority vote is needed to reduce it to no time:

Mr. President, I move that the time remaining on reconciliation be reduced to no time. What can you do about it? Weep. Reconciliation is one real beartrap.

And so it has been with sorrow that some of us have seen what has been happening on reconciliation. It is a process which has gotten out of hand and, if continued, it will undermine the deliberative nature of the institution.

It is a process by which committees of the Senate may dictate to the Senate. You take what we give you. There is not a thing you can do about it. Oh, yes, you can strike. But you take what we give you.

And within those committees that determination is made by a majority. There is a 17-member committee, and 9 members of the committee can determine that.

Send that to the Budget Committee, and the Budget Committee has no alternative but to send it to the Senate, and here we are faced with a super, super, colossally super, gag rule.

So we ought to take the utmost care in handling this legislative weapon.

Mr. President, I have had my faith renewed in this institution in these recent hours. . . .

. . . .

Yes, there were important measures wrapped into this reconciliation bill. But I hope that this is the beginning of the end of the abuse of the reconciliation process. I hope that it will be a lesson learned by all of us that we might in the future take heed, and remember not to put that measure that is so dear to our hearts into the reconciliation package. . . .

Mr. President, I close by saying, as I began, that human ingenuity can always find a way to circumvent a process. And reconciliation is a process. It has been abused terribly. But I have regained my faith. We are told in the Scriptures:

> Remove not the ancient landmark, which thy fathers have set.

The Constitution is the old landmark which they have set. And if we do not rise to the call of the moment and take a stand, take a strong stand against our own personal interests or against party interests, and stand for the Constitution, then how might we face our children and granchildren[1041] when they ask of us as Caesar did to the centurion,

> How do we fare today?

And the centurion replied,

> You will be victorious. As for myself, whether I live or die, tonight I shall have earned the praise of Caesar.

I not only compliment, but I also thank Members who have risen in this moment to do the responsible thing. We are going to look back on this day. So when you go with pride to meet the other body in conference, go with strong hearts, with confidence, and a determination that you are going to uphold the principles that our forefathers, men of this institution, stood for. Yours is an equal body -- the Senate.

[1041] This is so in the original; it should read "grandchildren."

When Aaron Burr walked out of the Old Senate Chamber on March 4, 1805 after had sat in the Chair, and presided over the impeachment trial of Supreme Court Justice Samuel Chase -- Burr had killed Alexander Hamilton in a duel at Weehawken, NJ. He sat in that chair as though nothing had ever happened. Warrants had been issued in the State of New Jersey and New York for his arrest. But he presided over that trial with a degree of fairness that was commended by friend and foe alike.

As Burr bade goodbye to the Senate over which he has presided for 4 years, this is what he said. And I close with his words because I think they may well have been written for a moment like this. He said:

> This House is a sanctuary; a citadel of law, of order, and of liberty, and it is here --
>
> It is here --
>
> in this exalted refuge -- here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God averts, its expiring agonies will be witnessed on this floor.[1042]

The Senate went on to adopt the leadership amendment by a voice vote.[1043]

[1042] 135 CONG. REC. S13,349-56 (Oct. 13, 1989).

[1043] *See id.* at S13,557.

Special Issue:

SEQUESTRATION
FOR FISCAL YEAR
1990

The Omnibus Budget Reconciliation Act of 1989 provided for revised sequestration for fiscal year 1990. Section 11002 of that Act provides:

SEC. 11002. RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED. -- (1) Upon the issuance of a new final order by the President under subsection (b)(3), the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

(2) Except as otherwise provided in sections 6001, 6101, and 6201, and subject to subsection (b), any action taken to implement the order issued by the President on October 16, 1989, shall be reversed, and any sequesterable budgetary resource that has been reduced or sequestered by such order is restored, revived, or released and shall be available to the same extent and for the same purpose is if an order had not been issued.

(3) For purposes of section 702(d) and 1101(c) of the Ethics Reform Act of 1989, the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of

1985 is deemed to be rescinded on January 31, 1990.

(b) ADJUSTED REDUCTION. --

(1) Before the close of the fifteenth calendar day beginning after the date of enactment of this Act, the Director of OMB shall issue a revised report using the exact budget baseline[1044] set forth in the report of October 16, 1989, and following the requirements, specifications, definitions, and calculations required by the Balanced Budget and Emergency Deficit Control Act of 1985 for the final report issued under section 251(c)(2) for fiscal year 1990, except that the aggregate outlay[1045] reduction to be achieved shall be an amount equal to $16.1 billion multiplied by 130 divided by 365. Calculations made to carry out the preceding sentence shall take into account the reductions and cancellations achieved by paragraphs (2) and (3) and shall not be affected by subsection (d).

[1044] Section 251(a)(6) sets forth the assumptions that were used in developing the baseline. *See supra* pp. 391-400.

[1045] Section 257(2) of Gramm-Rudman-Hollings defines "budget outlays" by adopting the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 10.

(2) Notwithstanding any provision of law other than this paragraph, the reductions and cancellations in the student loan programs described in section 256(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 achieved by the order issued by the President on October 16, 1989, shall remain in effect through December 31, 1989, and no reductions or cancellations in such programs shall be made by the order issued under paragraph (4).

(3) Notwithstanding any provision of law other than this paragraph, any automatic spending increase suspended or cancelled by the order issued by the President on October 16, 1989, shall be paid at a rate that is 130/365ths less than the rate that would have been paid under the laws providing for such automatic spending increase.

(4) On the date that the Director submits a revised report to the President under paragraph (1) for fiscal year 1990, the President shall issue a new final order to make all of the reductions and cancellations specified in such report in conformity with section 252(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such order shall be deemed to have become effective on

October 16, 1989.

(c) COMPLIANCE REPORT BY COMPTROLLER GENERAL. -- Before the close of the thirtieth day beginning after the date the President issues a new final order under subsection (b)(4), the Comptroller General shall submit to the Congress and the President a compliance report setting forth the information required under section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 with respect to such order.

(d) NO DOUBLE REDUCTION IN MEDICARE. -- With respect to items and services described in section 6001(a), 6101, or 6201(a) for periods for which reductions are made pursuant to the respective sections, no reduction shall be made under subsection (b).[1046]

The conference report to accompany the Omnibus Budget Reconciliation Act of 1989 explains the section:

> SECTION 11002. RESTORATION OF FUNDS SEQUESTERED
>
> Section 11002 provides for additional budget savings by retroactively replacing the President's October 16 sequester order with a new order. The

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[1046] Pub. L. No. 101-239, § 11002 (Dec. 19, 1989); H.R. CONF. REP. No. 101-386, 101st Cong., 1st Sess. 406-07 (1989); 125 CONG. REC. H9,446-47 (Nov. 21, 1989).

new order exactly follows all the procedures, rules, definitions, calculations, and other requirements of the Balanced Budget and Emergency Deficit Reduction Act of 1985 (as amended) with one major and three minor exceptions.

The major exception is that, instead of the $16.1 billion in outlay reductions that were stated in the October 16 order, the new order shall be based on a required outlay reduction only 35.6 percent as large. The new order will be in effect for the entire fiscal year, but at a lower rate of reductions. Since the new order saves a smaller amount, the old order is rescinded and any amounts (beyond those needed to be saved under the new order) are restored. If, under the old order, individual payments or contracts were reduced, rebates will be made or contracts will be adjusted to reflect the smaller savings required by the new order.

The conferees are aware that, because of the application of the "crediting" rule in section 252(f) of the Balanced Budget Act, the stated $16.1 billion in savings in the President's October 16 order would actually have achieved $12.3 billion, according to CBO. Since that section also applies to this new order with regard to appropriation bills enacted after October 16, 1989, the new order will also achieve actual savings smaller than the apparent $5.75 billion -- an estimated $4.55 billion.

One minor exception applies to the Guaranteed Student Loan program. The Balanced Budget Act does not contain a mechanism to achieve different savings in that program when the size of the sequester is altered. Therefore, section 11002 provides that the GSL savings will be achieved by the full Balanced Budget Act savings in effect in the first three months of the year, with no reductions under the new order for the remainder of the year. According to CBO, those three months will achieve more than 35.6 percent of the total amount of savings that would be achieved by a full-year sequester. The savings achieved during those three months will count as savings under the new order.

A second minor exception applies to Vocation Rehabilitation Basic State Grants and the Special Milk programs. The entitlement formulas in those programs are indexed to price increases; in the event of a sequester, the COLAs are frozen. Section 11002 overrides the COLA freeze that would otherwise be in place for the full year, and instead reduces the COLA by 35.6 percent. As with GSL's, the savings achieved by partial COLAs will count as savings under the new order.

Except as noted above, all the provisions of the Balanced Budget Act apply to the calculation and implementation of the new order. Specifically, it is still required that reductions in each program, project, or activity within a budget account be proportional to the reduction in the full account. However, since the new order is not technically the order of October 16, 1989, various requirements or procedures that are ancillary to that order do not apply. Specifically, the special Congressional procedures under section 258 of the Balanced Budget Act are not available, and the administration is not required to file a new accompanying message under section 252(a)(4) of the Act.

The final minor exception to the overlap between section 11002 and provisions in Title VI that achieve reconciliation savings by continuing the Medicare sequester under the original order of October 16 in full force for part of the year (e.g. through March 31, 1990, in the case of Part B Medicare). In order to prevent the Medicare sequester that would occur under this new order from applying on top of the Title VI sequester during the period when the two are concurrent, subsection (d) provides that during that period the Medicare cuts under Title XI will not take place. In effect, the continued Medicare cuts under Title VI (at a rate higher than the rate under Title XI) are deemed to achieve the Title XI Medicare savings during the period when the Title VI savings are in effect. After they expire, however, the Title XI Medicare savings will be in effect for the remainder of the year. This rule for the application of the Medicare reductions under Title XI is not taken into account in calculating the new OMB report and in the President's new order, although this rule then supercedes the President's new order with regard to Medicare cuts.[1047]

[1047] H.R. CONF. REP. No. 101-386, 101st Cong., 1st Sess. 942-44 (1989); 125 CONG. REC. H9,594 (Nov. 21, 1989).

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